

No. 16468 ✓

United States
Court of Appeals
for the Ninth Circuit

JACK A. LEMON and MARTIN de BRUIN,
Appellants,
vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Hawaii

FILED

JUL 30 1939

PAUL P. O'BRIEN, CLERK

No. 16468

United States
Court of Appeals
for the Ninth Circuit

JACK A. LEMON and MARTIN de BRUIN,
Appellants,
vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Hawaii



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Bond on (Martin de Bruin).....	20
Bond on (Jack A. Lemon).....	17
Certificate of Clerk to Transcript of Record on	23
Designation of Record To Be Printed on (USCA)	160
Notice of	16
Statement of Points on (USCA).....	159
Appearance Bond on Appeal:	
Martin de Bruin.....	20
Jack A. Lemon.....	17
Certificate of Clerk to Transcript of Record...	23
Designation of the Record To Be Printed (USCA)	160
Indictment	3
Judgment and Sentence:	
Martin de Bruin.....	12
Jack A. Lemon.....	14
Minutes of Dec. 16, 1958—Ruling on Motions, etc.	11
Motion For Acquittal.....	10

Motion For New Trial.....	10
Motion in Arrest of Judgment.....	10
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	16
Statement of Points on Which Appellants In- tend to Rely (USCA).....	159
Transcript of Proceedings and Testimony:	
Witnesses For Defendants:	
Mitchell, Betty	
—direct	143
—cross	145
Price, Sam	
—direct	146
—cross	151
Sprinkle, Lyle G.	
—direct	132
—cross	133
Stacy, Alfred	
—direct	135
Thomas, Alma	
—direct	137
—cross	139
Vincente, Larry	
—direct	130
—cross	131

Transcript of Proceedings—(Continued):

Witnesses For Defendants—(Continued):

Youn, Antone

—direct 127

—cross 128

Witnesses For Plaintiff:

Arkin, Ramona

—direct 26

—cross 28

Chung, Verna May

—direct 74

—cross 77

Clark, Thomas R.

—direct 84

—cross 86

Date, Thomas

—direct 42

DeCayette, Martha Ann

—direct 66

—cross 72

Enomoto, Robert

—direct 108

—cross 111

Furuya, Satoshi

—direct 58

—cross 60

Transcript of Proceedings—(Continued):

Witnesses For Plaintiff—(Continued):

Higa, Thomas	
—direct	62
—cross	63
Holloway, Clayton C.	
—direct	102
—cross	104
Houston, Patricia	
—direct	78
Jacobson, Elmer L.	
—direct	112
—cross	120
Kahookele, Lieselotte K.	
—direct	105
—cross	107
Karasick, Al	
—direct	53
Miller, Sylvia Ann	
—direct	81
Mitchell, Betty	
—direct	57
Muramoto, Raymond Y.	
—direct	46
—cross	47
—redirect	49
—recross	49

Transcript of Proceedings—(Continued):

Witnesses For Plaintiff—(Continued):

Nozawa, Nancy

—direct 92

—cross 94

Oka, George

—direct 31

—cross 36

Studebaker, Grace

—direct 50

—cross 51

Verdict 9

NAMES AND ADDRESSES OF ATTORNEYS

For The Appellants, Jack A. Lemon and Martin de Bruin,

HYMAN M. GREENSTEIN,
400 So. Beretania St.,
Honolulu, Hawaii.

For the Appellee, United States of America,

LOUIS B. BLISSARD,
United States Attorney,
Federal Building,
Honolulu, T.H.

In The United States District Court
For The District of Hawaii

Cr. No. 11,279 (18 USC § 1341)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK A. LEMON and MARTIN de BRUIN,

Defendants.

INDICTMENT

Count I

The Grand Jury Charges:

That commencing on or about the 21st day of May, 1958 and continuing to on or about the 17th day of June, 1958, the Defendants Jack A. Lemon and Martin de Bruin did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, hereinafter and more particularly set forth, from a large class of persons then residing in the City and County of Honolulu, Territory of Hawaii, that is to say, from that class of persons who were called by telephone during the above-mentioned period in connection with an organization known as the Honolulu Customers Checkbook and particularly from the following named persons: Nancy Nozawa, Robert Enomoto, Margaret Sorrell, Lieselotte Kahoo-kele, Clayton C. Holloway, and from diverse other

persons whose names are to the Grand Jurors unknown, all of said named and unnamed being members of said class of persons hereinabove referred to, and hereinafter referred to as "persons to be defrauded", and which said scheme and artifice to defraud is more particularly described as follows, to wit:

It was part of said scheme and artifice to defraud that the said Defendants would, intended to and did carry on a business of soliciting orders for the Honolulu Customers Checkbook by the use of the telephone, from an office at the Honolulu Merchandise Mart Building, City and County of Honolulu, Territory of Hawaii, in the District of Hawaii, and within the jurisdiction of this Court, and would, intended to, and did, by means of telephone calls, solicit orders from said "persons to be defrauded" for the Honolulu Customers Checkbook, and did make delivery of the Honolulu Customers Checkbook by means of and by use of the United States Postal Service.

And it was further a part of said scheme and artifice to defraud that for the purpose of inducing said "persons to be defrauded" to order from the Defendants the Honolulu Customers Checkbook the "person to be defrauded" was called on the telephone and asked a question and it was represented that if the "person to be defrauded" answered correctly he would be entitled to receive certain merchandise and services.

And it was further a part of said scheme and artifice that for the purpose of inducing said "persons to be defrauded" to order from the said De-

fendants the Honolulu Customers Checkbook and to pay the COD postage charge upon receipt of the checkbook from the United States Postal Service that they did not inform the "persons to be defrauded" that in order to obtain certain of the merchandise and services "received" it would be necessary to purchase other merchandise, tickets, or services.

And it was further a part of said scheme and artifice to defraud for the purposes of inducing said "persons to be defrauded" to order from the said Defendants the Honolulu Customers Checkbook, that in order to secure contracts with merchants in the City and County of Honolulu the Defendants represented to the subscribing merchants that this Honolulu Customers Checkbook would be advertised on radio, television and the newspapers, and would be sold from door to door and that no mention was made of telephone solicitation, and more particularly telephone solicitation of the nature hereinabove described.

And it was further a part of said scheme and artifice to defraud for the purpose of inducing said "persons to be defrauded" to order from the said Defendants a Honolulu Customers Checkbook, and for the further purpose of inducing the "persons to be defrauded" to pay the COD postage charges on the envelopes addressed to them that the said Defendants, their agents, and employees acting on their behalf would and did by means of telephone calls make oral representations, well knowing the representations would be and were false and fraudulent when made.

That on or about the 10th day of June, 1958, at Honolulu, City and County of Honolulu, in the District of Hawaii and within the jurisdiction of this Court, in violation of § 1341, Title 18, United States Code, Jack A. Lemon and Martin de Bruin for the purpose of executing the said scheme and artifice, and attempting to do so, did place and cause to be placed in an authorized depository for mail matter a letter from the Honolulu Customers Checkbook addressed to Clayton C. Holloway, 2443-B Cleghorn Street, Honolulu, T.H., to be sent and delivered by the Post Office establishment of the United States of America.

Count II

The Grand Jury realleges the allegations contained in Count I of this Indictment, except those contained in the last paragraph thereof.

That on or about the 14th day of June, 1958, at Honolulu, City and County of Honolulu, in the District of Hawaii and within the jurisdiction of this Court, in violation of § 1341, Title 18, United States Code, Jack A. Lemon and Martin de Bruin, the identical persons named in Count I of this Indictment, for the purpose of executing the said scheme and artifice, and attempting to do so, did place and cause to be placed in an authorized depository for mail matter a letter from the Honolulu Customers Checkbook addressed to Mrs. William K. Kahookele, 35 S. Kuakini Street, Honolulu, T. H., to be sent and delivered by the Post Office establishment of the United States of America.

Count III

The Grand Jury realleges the allegations contained in Count I of this Indictment, except those contained in the last paragraph thereof.

That on or about the 16th day of June, 1958, at Honolulu, City and County of Honolulu, in the District of Hawaii and within the jurisdiction of this Court, in violation of § 1341, Title 18, United States Code, Jack A. Lemon and Martin de Bruin, the identical persons named in Counts I and II of this Indictment, for the purpose of executing the said scheme and artifice, and attempting to do so, did place and cause to be placed in an authorized depository for mail matter a letter from the Honolulu Customers Checkbook addressed to J. Nozawa, 2617 Doris, Hon., T. H., to be sent and delivered by the Post Office establishment of the United States of America.

Count IV

The Grand Jury realleges the allegations contained in Count I of this Indictment, except those contained in the last paragraph thereof.

That on or about the 16th day of June, 1958, at Honolulu, City and County of Honolulu, in the District of Hawaii and within the jurisdiction of this Court, in violation of § 1341, Title 18, United States Code, Jack A. Lemon and Martin de Bruin, the identical persons named in Counts I, II and III of this Indictment, for the purpose of executing the said scheme and artifice, and attempting to do

so, did place and cause to be placed in an authorized depository for mail matter a letter from the Honolulu Customers Checkbook addressed to Margaret Sorrell, 2721 Kapiolani Blvd., Honolulu, T. H., to be sent and delivered by the Post Office establishment of the United States of America.

Count V

The Grand Jury realleges the allegations contained in Count I of this Indictment, except those contained in the last paragraph thereof.

That on or about the 17th day of June, 1958, at Honolulu, City and County of Honolulu, in the District of Hawaii and within the jurisdiction of this Court, in violation of § 1341, Title 18, United States Code, Jack A. Lemon and Martin de Bruin, the identical persons named in Counts I, II, III and IV of this Indictment, for the purpose of executing the said scheme and artifice, and attempting to do so, did place and cause to be placed in an authorized depository for mail matter a letter from the Honolulu Customers Checkbook addressed to Robert Enomoto, 45-521 Duncan Dr., Oahu, to be sent and delivered by the Post Office establishment of the United States of America.

Dated: October 3rd, 1958, at Honolulu, Hawaii.
A True Bill.

/s/ WALTER C. LIGHT,
Foreman, Grand Jury.

/s/ LOUIS B. BLISSARD,
United States Attorney.

Presented in open Court by the Grand Jury on
October 3, 1958.

/s/ WM. F. THOMPSON, JR.

[Endorsed]: Filed October 3, 1958.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the
above entitled cause, do hereby find the defendants,

Jack A. Lemon,

As to Count I—Guilty,

As to Count II—Guilty,

As to Count III—Guilty,

As to Count IV—Guilty,

As to Count V—Guilty, and

Martin de Bruin,

As to Count I—Guilty,

As to Count II—Guilty,

As to Count III—Guilty,

As to Count IV—Guilty,

As to Count V—Guilty,

as charged in the Indictment herein.

Dated: December 3, 1958, at Honolulu, Hawaii.

/s/ TOKANOU OISHI,

Foreman.

[Endorsed]: Filed December 3, 1958.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Defendants move the court to arrest the judgment in the above entitled cause for the following reason:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

Dated: Honolulu, Hawaii, this 6th day of December, 1958.

/s/ HYMAN M. GREENSTEIN,
Attorney for Defendants.

[Title of District Court and Cause.]

MOTION FOR ACQUITTAL

Defendants move the court for judgment of acquittal on the ground that the evidence is insufficient to sustain a conviction.

/s/ HYMAN M. GREENSTEIN,
Attorney for Defendants.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants move the court to grant them a new trial for the following reasons:

1. The court erred in not granting defendants' motion for acquittal made at the conclusion of the government's case.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. Defendants were substantially prejudiced and deprived of a fair trial in that the court erred in admitting over objection Plaintiff's Exhibit No. 6, consisting of 6 mail pouches filled with 1874 C.O.D. pieces of mail.

5. Defendants were substantially prejudiced and deprived of a fair trial in that the comments of the judge in admitting Plaintiff's Exhibit No. 6 into evidence, were improper and substantially prejudicial to the rights of the defendants.

/s/ HYMAN M. GREENSTEIN,
Attorney for Defendants.

[Endorsed]: Filed December 8, 1958.

From The Minutes of The United States District
Court For The District of Hawaii

Tuesday, December 16, 1958.

[Title of Court and Cause.]

On this day came Mr. Sanford J. Langa, Assistant United States Attorney, and also came Mr. Hyman M. Greenstein, counsel for the defendants here in, this case being called for hearing on motion for acquittal, motion in arrest of judgment, and motion for new trial.

Following a short presentation of the motions by Mr. Greenstein and without a reply by the Assistant U. S. Attorney, the motions were denied by the Court.

District Court of The United States For The
District of Hawaii Division

CR. No. 11,279

UNITED STATES OF AMERICA,

vs.

JACK A. LEMON and MARTIN de BRUIN.

JUDGMENT AND COMMITMENT

On this 19th day of January, 1959, came the attorney for the government and the defendant Martin de Bruin appeared in person and by counsel, Hyman M. Greenstein, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty, of the offenses of having devised a scheme and artifice to defraud a large class of persons then residing in the City and County of Honolulu, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, well knowing the representations would be and were false and fraudulent when made, and for the purpose of executing the said scheme and artifice, and attempting to do so, caused to be placed in

an authorized depository for mail matter letters from the Honolulu Customers Checkbook addressed to various individuals, to be sent and delivered by the Post Office establishment of the U.S.A., in violation of §1341, Title 18, USC, as charged in Counts I, II, III, IV and V, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count I—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count II—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count III—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count IV—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count V—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Sentences of imprisonment as to each of Counts I, II, III, IV and V are to run concurrently with each other.

Payment of the sum of \$500.00 on Count I will constitute the payment of the fine on each of the remaining counts.

Mittimus Stayed Until 11:00 A.M., Wednesday,
January 21, 1959.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JOHN WIIG,
United States District Judge.
/s/ THOS. P. CUMMINS,
Deputy Clerk.

District Court of The United States For The
District of Hawaii Division

CR. No. 11,279

UNITED STATES OF AMERICA,

vs.

JACK A. LEMON and MARTIN de BRUIN.

JUDGMENT AND COMMITMENT

On this 19th day of January, 1959, came the attorney for the government and the defendant Jack A. Lemon appeared in person and by counsel, Hyman M. Greenstein, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty, of the offenses of having devised a scheme and artifice to defraud a large class of persons then

residing in the City and County of Honolulu, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, well knowing the representations would be and were false and fraudulent when made, and for the purpose of executing the said scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter letters from the Honolulu Customers Checkbook addressed to various individuals, to be sent and delivered by the Post Office establishment of the U.S.A., in violation of § 1341, Title 18, USC, as charged in Counts I, II, III, IV and V, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count I—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count II—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count III—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count IV—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Count V—Three (3) Months and Fined Five Hundred Dollars (\$500.00).

Sentences of imprisonment as to each of Counts I, II, III, IV and V are to run concurrently with each other.

Payment of the sum of \$500.00 on Count I will constitute the payment of the fine on each of the remaining counts.

Mittimus Stayed Until 11:00 A.M., Wednesday, January 21, 1959.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,
United States District Judge.
/s/ THOS. P. CUMMINS,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellants: Jack A. Lemon, 1230 Palolo Street, Honolulu, Hawaii. Martin de Bruin, 4366 Royal Place, Honolulu, Hawaii.

Name and address of Appellants' attorney: Hyman M. Greenstein, 400 So. Beretania St., P. O. Box No. 661, Honolulu, Hawaii.

Offense: 18 U.S.C. Sec. 1341—5 counts.

Judgment and Sentence: Following a jury ver-

dict of guilty on all counts said appellants were on January 19, 1959, sentenced to 3 months imprisonment and to pay a fine of \$500.00 each on Count One; a similar sentence of imprisonment and fine on Counts 2, 3, 4 and 5, with the sentence of imprisonment on Counts 2, 3, 4 and 5 to run concurrently with Count One, and with payment of the fine under Count One to constitute payment of the fines imposed under Counts 2, 3, 4 and 5.

Appellants are on bail.

We, the above named Appellants, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

Dated at Honolulu, Hawaii, this 23rd day of January, 1959.

/s/ HYMAN M. GREENSTEIN,
Appellants' Attorney.

HYMAN M. GREENSTEIN and
ROBERT A. FRANKLIN,
Of Counsel.

[Endorsed]: Filed January 23, 1959.

[Title of District Court and Cause.]

APPEARANCE BOND

Know All Men By These Presents:

That we Jack A. Lemon, as principal, and Rex Ravelle, as surety, are held and firmly bound unto the United States of America in the full sum of Five Thousand Dollars (\$5,000.00) for the payment

of which well and truly to be made we do bind ourselves, our executors and administrators, jointly and severally by these presents,

Whereas, Lately in the United States District Court in and for the District of Hawaii judgment and sentence were made and entered against Jack A. Lemon, one of the defendants above named, and

Whereas, notice has been given of appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit to secure a reversal of said judgment and sentence,

Now, Therefore, the condition of the above obligation is such that if the said Jack A. Lemon shall appear here in person or by attorney in the United States Circuit Court of Appeals for the Ninth Judicial Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide by and obey all orders made by said Circuit Court in said Cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a retrial of said cause and abide by and obey all the orders made by said District Court, provided the judgment and sentence made against him shall be reversed by said Circuit Court, and if he shall not depart from the Island of Oahu, Territory of Hawaii, without first obtaining the permission of the District Court, then the above

obligation shall be void, otherwise to remain in full force, effect and virtue.

In Witness Whereof, the above bounden principal and surety have hereunto affixed their hands this 23rd day of January, 1959.

/s/ JACK A. LEMON,
Principal.

/s/ REX RAVELLE,
Surety.

Taken and acknowledged before me this 23rd day of January, 1959.

[Seal] /s/ E. C. ROBINSON,
Deputy Clerk, U .S. District
Court.

Approved:

/s/ JON WIIG,
U. S. District Judge.

Territory of Hawaii,
City and County of Honolulu—ss.

Rex Ravelle, being first duly sworn on oath, deposes and says:

That he is the Rex Ravelle named as surety in the within and foregoing bond; that he resides at 965 Makaiwa Street, Honolulu, Hawaii; that the telephone number at said residence is 78535.

That he deposits herewith the sum of Five Thousand Dollars (\$5,000.00) with the Clerk of the above

entitled Court under the terms and conditions recited in the within and foregoing bond.

/s/ REX RAVELLE.

Subscribed and sworn to before me this 23rd day of January, 1959.

[Seal] /s/ E. C. ROBINSON,
Deputy Clerk, United States District Court, Territory of Hawaii.

Receipt of the said sum of Five Thousand Dollars (\$5,000.00) is hereby acknowledged.

WM. F. THOMPSON, JR.,
Clerk,
/s/ By E. C. ROBINSON,
Deputy Clerk, U. S. District
Court.

[Endorsed]: Filed January 23, 1959.

[Title of District Court and Cause.]

APPEARANCE BOND

Know All Men By These Presents:

That we Martin de Bruin, as principal, and Rex Ravelle, as surety, are held and firmly bound unto the United States of America in the full sum of Five Thousand Dollars (\$5,000.00) for the payment of which well and truly to be made we do bind ourselves, our executors and administrators, jointly and severally by these presents,

Whereas, Lately in the United States District Court in and for the District of Hawaii judgment and sentence were made and entered against Martin de Bruin, one of the defendants above named, and

Whereas, notice has been given of appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit to secure a reversal of said judgment and sentence,

Now, Therefore, the condition of the above obligation is such that if the said Martin de Bruin shall appear here in person or by attorney in the United States Circuit Court of Appeals for the Ninth Judicial Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide by and obey all orders made by said Circuit Court in said Cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a retrial of said cause and abide by and obey all the orders made by said District Court, provided the judgment and sentence made against him shall be reversed by said Circuit Court, and if he shall not depart from the Island of Oahu, Territory of Hawaii, without first obtaining the permission of the District Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

In Witness Whereof, the above bounden principal and surety have hereunto affixed their hands this 23rd day of January, 1959.

/s/ MARTIN de BRUIN,
Principal.
/s/ REX RAVELLE,
Surety.

Taken and acknowledged before me this 23rd day of January, 1959.

[Seal] /s/ E. C. ROBINSON,
Deputy Clerk, U. S. District
Court.

Approved:

/s/ JON WIIG,
U. S. District Judge.

Territory of Hawaii,
City and County of Honolulu—ss.

Rex Ravelle, being first duly sworn on oath, deposes and says:

That he is the Rex Ravelle named as surety in the within and foregoing bond; that he resides at 965 Makaiwa Street, Honolulu, Hawaii; that the telephone number at said residence is 78535.

That he deposits herewith the sum of Five Thousand Dollars (\$5,000.00) with the Clerk of the above entitled Court under the terms and conditions recited in the within and foregoing bond.

/s/ REX RAVELLE.

Subscribed and sworn to before me this 23rd day of January, 1959.

[Seal] /s/ E. C. ROBINSON,
Deputy Clerk, United States District Court, Territory of Hawaii.

Receipt of the said sum of Five Thousand Dollars (\$5,000.00) is hereby acknowledged.

WM. F. THOMPSON, JR.,
Clerk,
/s/ By E. C. ROBINSON,
Deputy Clerk, U. S. District
Court.

[Endorsed]: Filed January 23, 1959.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 212 consists of a statement of the names and addresses of the attorneys of record and of the various pleadings, exhibits, and transcript of proceedings as hereinbelow listed and indicated:

Indictment.

Verdict.

Motion in Arrest of Judgment, Motion for Acquittal, Motion for New Trial, Memorandum of Points and Authorities in Support of Motions, Notice of Motion.

Judgment and Commitment, Martin de Bruin.

Judgment and Commitment, Jack A. Lemon.

Notice of Appeal.

Appearance Bond, Jack A. Lemon.

Appearance Bond, Martin de Bruin.

Order Enlarging Time.

Designation of the Contents of the Record on Appeal.

Transcript of Proceedings.

Plaintiff's Exhibits Nos. 1, 2, 4, 5, 5-B, 7, 8, 9, and 10 and Defendants' Exhibits "A," "B," "C," "D," "E," "F-1," "F-2," "G," "H-1," "H-2," "I-1" through "I-8," "J-1," "J-2," "K," "L," "M," and "N" (in separate envelope).

I further certify that included herein is a copy of the Minutes of this Court of December 16, 1958.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of May, 1959.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk.

In The United States District Court For
The District of Hawaii

Criminal No. 11,279

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK A. LEMON and MARTIN de BRUIN,

Defendants.

REPORTER'S TRANSCRIPT

In the above-entitled matter, held in the U. S. District Court, Honolulu, T. H., on December 1, 2 and 3, 1958,

Before Hon. Jon Wiig, Judge and a Jury.

Appearances: S. J. Langa, Esq., appearing for the Plaintiff. Hyman M. Greenstein, Esq., appearing for the Defendants. [1]*

Proceedings

Honolulu, T. H., December 1, 1958 at 10:00 a.m.

(Case called by the Clerk.)

(A jury was duly impaneled and sworn to try the case.)

(Recess.)

The Court: The record will show the jury is present, the Defendants and their counsel. Before you proceed, Mr. Langa, ladies and gentlemen of the jury, I instruct you to absolutely disregard any

* Page numbers appearing at top of page of Reporter's Transcript of Record.

of the answers given by any of the other jurors when I was examining you as to your qualifications to sit on this jury panel. I think you understand what I mean.

You may proceed.

Mr. Langa: The indictment in this case is fairly detailed, and I think anything I would say by way of opening statement would be repetitious. I think I will waive the opening statement.

The Court: I didn't mean to take away your privilege, but I felt in view of the length of the indictment that I should read the first count.

Mr. Langa: I don't mean to imply anything, but I think that in view of the fact the indictment is so detailed, it seems hardly necessary for me to make an opening statement.

The Court: Mr. Greenstein, do you wish to make an opening statement now? [2]

Mr. Greenstein: We will also waive opening remarks, your Honor.

The Court: Very well. Will you call your first witness?

Mr. Langa: Mrs. Arkin.

RAMONA ARKIN

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Mrs. Arkin, will you please state your name and occupation for the record?

(Testimony of Ramona Arkin.)

A. Yes. Mrs. Ramona Arkin. I am manager of the Stauffer Salon.

The Court: You will have to keep your voice up so that everyone can hear you. If at any time any juror can't hear a witness, raise your hand or shout out, because it is absolutely necessary that you hear every word of testimony in this trial.

Q. (By Mr. Langa): Will you please answer the question again and keep your voice up?

A. Mrs. Ramona Arkin, manager of the Stauffer Salon.

The Court: Will you spell the last name?

A. A-r-k-i-n.

Q. (By Mr. Langa): Were you manager of the Stauffer Salon in June of this year? [3]

A. No, I was not.

Q. Were you employed there at that time?

A. Yes, I was.

Q. Can you outline for the Court, just briefly in your own words, the services that the Stauffer Salon provides for the public?

A. Yes. We are a slenderizing salon.

Q. And are your services available to both men and women? A. No, for ladies only.

Q. And what is your policy with regard to women who come into your salon interested in a figure analysis or trial lesson?

A. We offer a free trial, one free trial and a figure analysis to anyone who wants to come in, to give them a chance to try it out. At that time we weigh and measure them and see about how

(Testimony of Ramona Arkin.)

much they have to come down, and we can tell how long it will take to get them there.

Q. Now, do you know Mr. Jack Lemon or Martin de Bruin?

A. No, I do not, although I believe I have seen them before.

Q. At the Stauffer Salon? A. Yes, sir.

Mr. Langa: Thank you. No further questions.

Cross Examination

Q. (By Mr. Greenstein): Well, now do you know whether or not the company with which you are associated participated in the coupon business of the Honolulu Customers Checkbook?

Mr. Langa: Objection, your Honor. This is beyond the scope of the direct examination, and I think that if he wants to call the witness, he can in the due course. But at this time this sort of question is more properly direct examination.

The Court: I think Mr. Langa is right.

Mr. Greenstein: I think he is technically right, but to save time, your Honor, it appears there are several witnesses in the same category, we would respectfully request that we be permitted to designate them as our witness in the interest of saving time, so the people won't have to go and be called again. There are about ten or twelve witnesses who, in effect, will be witnesses for both sides.

The Court: Well, how far would you propose to examine this witness? The government should put on its case first and then the Defendants.

(Testimony of Ramona Arkin.)

Mr. Greenstein: That is true. I have never talked with this particular witness. I can't tell whether this would be a lengthy examination or not.

The Court: Then I am going to ask you to confine your cross examination to the direct examination. [5]

Q. (By Mr. Greenstein): Well, do you know anything about the Stauffer System signing up with Honolulu Customers Checkbook? May I just ask that one question?

Mr. Langa: This is, in effect, your Honor, the same question that was asked previously and is not a proper question.

The Court: I will allow her to answer yes or no, and that will be as far as you can go in this line.

Mr. Greenstein: May I withdraw the question? I move that all the witness' testimony be stricken as pending neither to prove or disprove any of the issues in this case.

The Court: Yes. The motion is denied. I assume that the government will tie it in. You may renew your motion at a later time.

Mr. Greenstein: May we have an answer to the one question?

The Court: Will you read the question?

(The last question was read by the reporter.)

The Witness: No.

Q. (By Mr. Greenstein): What is the cost of the treatment that your company gives?

Mr. Langa: Your Honor, this, again, is not within the scope of the direct examination.

(Testimony of Ramona Arkin.)

The Court: Well, it is permissible to a certain extent, because the witness has testified about one free [6] treatment and a figure analysis. However, here again, I will not allow extensive cross examination. Do you understand the question?

The Witness: I don't know.

The Court: Read the question.

(Question read by the reporter.)

The Witness: We have various rates. One treatment would be \$3.50.

Q. (By Mr. Greenstein): Your course of treatment, would you tell us something about your course of treatment as to general cost?

Mr. Langa: Your Honor, again this is going beyond the scope of the direct examination.

Mr. Greenstein: May I respectfully submit that the door was opened by eliciting from this witness the fact that they do, or have given or do give one free treatment.

The Court: I will allow the question.

The Witness: In a series of treatments our rates would range anywhere from two to \$3 in a series over 30.

Q. (By Mr. Greenstein): A series over how many treatments? A. 30.

Q. Who was manager at the time, in June of this year? A. Virginia Hilliard.

Q. Is she still in the Territory? [7]

A. No, she is not.

Mr. Greenstein: I have no further question.

The Court: Redirect?

Mr. Langa: No questions.

The Court: You are excused Mrs. Arkin.

Mr. Langa: Mr. George Oka.

GEORGE OKA

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you please state your name and occupation?

A. My name is George Oka. I am owner and operator of the George Service, a Shell Service Station.

Q. Mr. Oka, have you ever met Jack Lemon or Martin de Bruin? A. Yes, sir, I have.

Q. Are either of them or both of them in this room now.

A. Yes, right there. (Indicating.)

Mr. Greenstein: We will stipulate to the identification, your Honor.

The Court: Very well.

Mr. Langa: Thank you.

Q. Have you ever had any dealings with these men or—strike that. [8]

Has either of these men ever approached you with a plan for an advertising scheme involving coupons?

A. Yes, they have.

Q. Tell us just generally, overall, the means by which they told you they would promote the scheme?

(Testimony of George Oka.)

A. Well, as far as I can remember, it was back in May, I think, Mr. de Bruin and Mr. Lemon came into my service station and told me that they had a promotion where we could acquire new customers. And they had a sample card with them showing how the coupons will work. It was not exactly a coupon. It was just a card, itself. And with that understanding, that they will go out and sell these cards, well, I signed a contract with them.

Q. What method were they going to use to sell the cards?

A. Well, when I talked to them at that time they were supposed to go out and sell them either house to house or——

Q. In any particular area?

A. Well, actually, it was supposed to be in the McCully area where my service station is located.

Q. You say in the McCully area?

A. Yes. Not exactly in the McCully area, but the area which is adjacent to my service station.

Q. In the vicinity of your service station? [9]

A. That is right.

Q. Mr. Oka, I show you a typewritten sheet of paper on yellow paper. Can you identify that?

A. Yes, I could.

Q. Can you tell us what it is?

A. Well, this is what you may call it, a transcript, when they had first promoted my promotion, and these are the exact words which they used over the telephone to sell the cards.

(Testimony of George Oka.)

Q. I see. Where did you first see that piece of paper?

A. When I went up to their office. I forget what the room number was, but up in the Merchandise Mart Building, where they had anywhere from half a dozen to one dozen girls on the telephone, call up various people all over town. And I went in there one day because I didn't like the way it was being promoted. And I had lots of complaints coming in, and I went up there. I asked the girl for a copy of the transcript that they were calling and they gave me this.

Q. So you obtained that at the office of Lemon and de Bruin? A. That is right, sir.

Mr. Langa: Your Honor, I offer this in evidence.

Mr. Greenstein: To which we have no objection.

The Court: It will be received as exhibit number 1.

The Clerk: Plaintiff's exhibit number 1. [10]

(The document referred to was marked Plaintiff's exhibit number 1 and received in evidence.)

Q. (By Mr. Langa): Mr. Oka, were you asked to bring anything with you today?

A. Yes, a copy of my contract.

Q. And do you have it?

A. Yes, I have it here. I also have this cancellation of the contract.

Q. Down at the bottom I see two signatures. Can you tell me whose signatures those are?

(Testimony of George Oka.)

A. One is Martin de Bruin and the other one is mine.

Q. You called it a contract. This is the contract with the Defendants in regard to that promotion which you have talked about? A. Yes, sir.

Mr. Langa: Your Honor, may I offer that?

Mr. Greenstein: May I see it first? I have no objections.

The Court: It will be received as exhibit number 2.

(The document referred to was marked Plaintiff's exhibit number 2 and received in evidence.)

The Court: May I suggest, Mr. Langa, that this might be read to the jury and save time. There is no mystery about it. [11]

Mr. Langa: Oh, yes, I would be happy to do that, your Honor. Exhibit 1, which was identified as the transcript which Mr. Oka obtained at the office, it says at the top in handwriting, "Merchandise Mart, 203," and in typewriting, "Do not take orders from children. For call back give this telephone number—68079.

"Hello, this is telephone number" and a space.

"This is George's Shell Service calling and I have some wonderful news for you.

"If you can answer the following question correctly you will have the opportunity to receive a George's Shell Service card worth over \$50 in useful car service.

"Are you ready for your question?

(Testimony of George Oka.)

“One. What is the largest island of the Hawaiian chain.

“Answer. Island of Hawaii.

“If missed, you say, ‘I’m sorry, the answer is the Island of Hawaii, but since you tried so hard we will give you another question.’

“2. In which hand does the Statute of Liberty hold the torch.

“Answer. Right.

“Well congratulations. Now you will receive the following:

“75 free gallons of gas, 2 free grease jobs, free [12] car wash, free flat tire repair, free battery charge, free brake adjustment, free tire rotation, free wheel bearing packed, free radiator flush.

“Your points cleaned and set and many other valuable services for your car. Now, these are only a few of the many wonderful values offered by George’s Shell Service who has gone to a great expense in order to acquaint you with his station.

“The only cost to you is \$3.95 for printing and handling cost of this service card, in all you do receive over \$50 in useful values. These cards are limited to one per family, and they will be delivered by your mail man C.O.D.

“Do I have the right address, Mrs.—read name and address out of phone book.

“Now, your card will be delivered to you tomorrow. You understand when your mail man brings your George’s Shell Service card you pay him only \$3.95. George’s Shell wants and respects your pa-

(Testimony of George Oka.)

tronage and we wish you a good time, so take advantage of these wonderful offers on your service card.

“Thank you and goodbye.”

Q. Mr. Oka, did any of your employees ever read that script on the telephone? A. No.

Q. Did you ever authorize anybody to read that script on the telephone? [13]

A. No, I haven't.

Mr. Langa: No further questions.

Cross Examination

Q. (By Mr. Greenstein): In connection with your signing a contract with the Honolulu Customers Checkbook, sir, was there an agreement as to the format of the card or coupon that would be used in the solicitation of these orders or services?

A. You mean a sample of the card?

Q. Yes. A. Yes.

Q. Do you have that sample with you?

A. Yes.

Q. Will you kindly produce it?

(The witness produces document.)

Q. I see there is some handwriting on this card. Do I assume that this has your signature and Mr. de Bruin's initials on the card?

A. Yes, and Mr. Lemon. That signature there was in verification of the cancellation of our contract.

Q. Verification of the cancellation?

A. Yes. In other words, the understanding is

(Testimony of George Oka.)

that we are—George's Shell Service is honoring the cards that were already sold.

Q. Well, we will come to that in a little while.
[14] Was not this card or a similar card agreed to by you in connection with your first signing up with Honolulu Customers Checkbook? A. Yes.

Q. Is that correct?

A. You mean if we agreed to that?

Q. Yes. A. Yes.

Q. In other words, you agreed to a sales promotion with the representatives of Honolulu Customers Checkbook, did you not; you agreed to participate with them?

A. Well, not participate in the promotion itself, but just to honor that card.

Q. To the extent that your establishment would issue or acknowledge cards and honor them, you participated with them, did you not?

A. Well, when you say participation——

Q. I will withdraw the question and reframe it. At the time you signed the contract which is in evidence as Plaintiff's exhibit number 1, I believe, did you have in mind the services that would be offered in your name? A. Yes.

Q. Did you go over this card before there was any release of any solicitations in your behalf?

A. You mean if I checked it over first?

Q. Yes. A. Yes. [15]

Q. Now, isn't it fair to say that the primary purpose of your permitting this card to be used

(Testimony of George Oka.)

was to promote new business and new customers; isn't that right? A. That is correct.

Q. Did either Mr. Lemon or Mr. de Bruin tell you how they would seek to get customers for you?

A. Well, when I first signed the contract with them, I definitely asked them that, if they were going out selling house to house, that was my understanding, that they were going out and explain to the customers how these cards worked. And as far as using the telephone to sell these cards, I was unaware of until the customers begin coming in and telling me about it.

Q. Well, would it have made any difference in your mind if you had been told that they would have used the telephone?

A. Oh, yes, definitely.

Q. You were interested in getting new customers into your station, were you not?

A. Yes, but not at the expense of, you might say, misinterpreting the card itself.

Q. Misinterpreting the card itself?

A. Yes.

Q. Well, let's get it in evidence to find out if it [16] is misinterpreted. May we offer this in evidence?

The Court: Yes. It will be received as Defendants' exhibit A.

(The document referred to was received as Defendants' exhibit A in evidence.)

Mr. Greenstein: May I first read into evidence what is an exhibit of the Plaintiff?

(Testimony of George Oka.)

The Court: You may read it to the jury.

Mr. Greenstein: Plaintiff's exhibit number 2.

"Agreement. This agreement made by and between the Honolulu Customers Checkbook and the advertiser George's Shell Service in Honolulu Customers Checkbook service card for Honolulu, Hawaii, and in consideration of the mutual promises herein contained made by one to the other, Honolulu Customers Checkbook agrees to pay all of the advertising costs on radio, T.V. and newspapers, and the advertiser pays no costs except that he agrees and promises to honor coupons in the passbook (Service card).

"Advertiser agrees to honor 3,000 coupons which will read as sample attached, except gas 5 gallons free with each 30 gallons." A pencil notation "48."

"Cards expire"—I can't tell whether it is 4 or 3 months from date of sale.

Q. Now, may I first show you this exhibit for your inspection and ask you whether the phraseology "Service card" [17] that appears on that refers to this card which is in my hand and which is Defendant's exhibit A?

A. That is right.

Q. So, at the time you entered into an agreement with the Honolulu Customers Checkbook organization you had committed yourself to honor 3,000 of these cards, had you not?

A. That is right.

Q. What was the value of the services that were

(Testimony of George Oka.)

offered in the card which is represented in evidence as Defendants' exhibit A?

Mr. Langa: Your Honor, this again, is going beyond the scope of the direct examination. Previously, we have dealing with the circumstances, formation of the contract, which was in the direct examination, but now we are getting into the matter of affirmative defense.

Mr. Greenstein: I respectfully submit, your Honor, the door was opened.

The Court: Just a minute. The objection is overruled.

Mr. Greenstein: Thank you.

Q. What was the value of the services honored by the card?

A. When you say "Value of the card," do you mean if they had taken full advantage of everything which is on the card? [18]

Q. Let's put it this way. I will withdraw it. I show you this card for your inspection and ask you to tell the Court and jury whether or not this card reads under your name, George's Service Station, "Congratulations. This is your Shell Service Card worth over \$50 in free passenger car services"; isn't that so indicated?

A. That is right.

Q. Now, as a matter of fact, this particular sales copy that you brought into Court this morning, that was discontinued after a couple of days, was it not? A. That is right.

(Testimony of George Oka.)

Q. I beg your pardon? A. That is right.

Q. By mutual agreement of the parties?

A. That is right.

Q. And you went to them, you begged off on this contract, didn't you?

A. I did not beg off, actually, coming down to it. I was dissatisfied with the way the promotion was going, so I consulted my attorney and we talked it over with Mr. Lemon and Mr. de Bruin and we mutually agreed to cancel it.

Q. In other words, you indicated to the Defendants that you were unhappy with the situation; right?

A. Yes, the way the cards had been promoted.

Q. And as a result of conferences there was a mutual [19] understanding to cancel this contract, is that it? A. That is right.

Q. Now, at the time you signed the contract you intended to honor all coupons or cards, did you not?

A. That is right.

Q. And at the time of the cancellation of the contract I believe you agreed to honor whatever cards might be outstanding?

A. That is right.

Mr. Greenstein: I have no further questions.

Mr. Langa: I have no further questions.

The Court: You are excused, Mr. Oka.

Mr. Langa: Mr. Thomas Date.

THOMAS DATE

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you please state your name and occupation?

A. I am Thomas Date. I am running Date's Service Station.

The Court: Will you spell that last name?

The Witness: D-a-t-e.

Q. (By Mr. Langa): Mr. Date, have you ever met the Defendants in this case?

A. Mr.—which is—— [20]

Q. Mr. Lemon and Mr. de Bruin? A. No.

Q. Have you ever met any representative of the Honolulu Customers Checkbook?

A. Yes, sir.

Q. Have you ever signed any contract with the Honolulu Customers Checkbook? A. No, sir.

Q. Has anyone ever come into your service station with cards from the Honolulu Customers Checkbook for redemption? A. Yes.

Q. Do you have a copy of that card with you?

A. Yes, I do.

(The witness produces document.)

Q. You don't have the card? A. No.

Q. Would you tell me what this document is which you have produced?

A. This document is for a contract to be signed after it is OK'd by the B.B.B. We went to find out

(Testimony of Thomas Date.)

if this will pass through the B.B.B., then I will sign it.

Q. I see. Who wrote this?

A. I think the name is on the — signed Mr. Conley.

Q. This is, then, the proposed contract with the Honolulu Customers Checkbook—— [21]

A. Yes.

Q. ——which you were asked to sign?

A. That is right.

Q. And is this his signature on the bottom?

A. Yes, that is his signature.

Mr. Langa: Your Honor, I offer this—oh, excuse me. (Handing document to counsel.)

Mr. Greenstein: Well, in view of the prior testimony, your Honor, I am first going to move to strike all of the witness's testimony on the ground that the testimony does not relate to matters which are set forth in this particular indictment, inviting the Court's attention to the fact that we have prior hereto moved both for a bill of particulars and to strike certain surplusage, which was denied, and respectfully point out that the testimony elicited from the witness prior to the signing of this particular proposed contract goes beyond the matter referred in the allegations of the indictment.

The Court: For one thing, no time element has been established here with regard to any contract, which is necessary, Mr. Langa.

Mr. Langa: I may have overlooked that, your

(Testimony of Thomas Date.)

Honor. We can establish the time easily enough. Shall I proceed?

The Court: The only thing before the Court is the offer of that document in evidence. [22]

Mr. Greenstein: Well, with respect to the offer in evidence we will move that there is not sufficient foundation laid.

The Court: The objection is sustained.

Q. (By Mr. Langa): Do you remember when it was that Mr. Conley came to you?

A. I can't remember.

Q. Well, do you remember approximately; was it this year? A. Yes.

Q. Several months ago?

A. I would say between May or June.

Q. May or June. Your Honor, that is the period of the indictment.

Did he say anything about how the cards would be distributed?

A. Yes.

Q. What did he say?

A. Well, they will be distributed from house to house. He didn't say by mail or anything, but he said contact by house to house, not by telephone calls.

Q. In any particular area? I mean in any special place?

A. Well, he said it will be all around, because they wouldn't be just our station. It will be around, to distribute [23] this type of business. It will be all kinds of business. It will be all around.

(Testimony of Thomas Date.)

Q. But it would be by house to house sales?

A. Yes, that is right.

Mr. Langa: Your Honor, I think that the foundation has been established as to the date and as to a representative of the business involved having approached him with a similar proposition as the other witnesses have been approached.

The Court: I have not seen the document you are offering. Is it comparable to the one that is in evidence?

Mr. Greenstein: Well, I am going to object.

The Court: Just one moment.

Mr. Greenstein: I think your Honor should see it. I respectfully call the Court's attention to this one fact.

The Court: Just one moment. I don't think there is sufficient foundation laid at this time. The objection is sustained.

Mr. Langa: Then, your Honor, may we have it marked for identification?

The Court: Yes, it will be marked exhibit 3 for identification.

(The document referred to was received as Plaintiff's exhibit 3 for identification.)

Q. (By Mr. Langa): Mr. Date, subsequent to the time you received that, when you spoke to Mr. Conley, did anyone [24] appear at your service station with cards to be redeemed?

A. No, I didn't have anybody. But we have a telephone call from Honolulu asking if we are dis-

(Testimony of Thomas Date.)

tributing the cards. And I said, "We are not ready yet because the contract is not——"

Mr. Greenstein: May I move to strike the last part of that answer as being not responsive to the question.

The Court: The motion to strike is denied.

Q. (By Mr. Langa): Did any of your customers ask you about the cards? A. No, sir.

Mr. Greenstein: I am going to——

The Court: What was the answer?

(Record read.)

Mr. Greenstein: Oh.

Mr. Langa: I have no further questions.

Mr. Greenstein: No questions.

The Court: You may step down, Mr. Date.

RAYMOND Y. MURAMOTO

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q .(By Mr. Langa): Please tell us your name and occupation?

A. My name is Raymond Y. Muramoto, operating Ray's Shell Service. [25]

Q. Have you ever met Mr. Lemon or Mr. de Bruin? A. I met Mr. de Bruin.

Q. And has he ever approached you with a plan involving the Honolulu Customers Checkbook?

A. Yes, he did.

Q. Did he explain his plan to you?

(Testimony of Raymond Y. Muramoto.)

A. Yes.

Q. Briefly, could you tell us how he represented to you that he would promote the plan?

Mr. Greenstein: Pardon me. Who are you referring to?

Mr. Langa: Mr. de Bruin, he said he talked to.

The Court: What was the question?

Q. (By Mr. Langa): Did Mr. de Bruin explain to you how he would promote the Honolulu Customers Checkbook?

A. Yes. As far as I heard, he was going to televise it and on the radio. That is all I heard. And he didn't say anything about house to house or anything like that.

Q. Did he say anything about——

A. About selling it house to house?

Q. Did he say anything about selling it, the Customers Checkbook, on the telephone?

A. No.

Q. Television and radio? A. Yes. [26]

Q. Newspapers? A. Yes.

Mr. Langa: I have no further questions.

Cross Examination

Q. (By Mr. Greenstein): Did you or did you not sign an agreement with Honolulu Customers Checkbook? A. Yes, I did.

Q. You agreed to honor how many coupons or cards?

Mr. Langa: Your Honor, this is going beyond the scope of direct examination.

(Testimony of Raymond Y. Muramoto.)

The Court: Objection overruled.

Q. (By Mr. Greenstein): How many coupons or cards——

A. In the card it says 10,000.

Q. 10,000? A. That is right.

Q. In other words, you were interested in getting 10,000 new customers in your station, were you not? A. Yes.

Q. By the way, did you bring your copy of the contract with you? A. Yes, I did.

Q. Is there a card attached to it of the services that were to be given?

A. No, I didn't bring that card with me. I just brought the contract with me. [27]

Q. May I see it, please?

(The witness produces document.)

Mr. Greenstein: Offer it in evidence.

The Court: There being no objection, it will be received as exhibit B.

(The document referred to was received in evidence as Defendants' exhibit B.)

Mr. Greenstein: May I have this card marked for identification?

The Court: Yes, it will be marked exhibit C for identification.

(The document referred to was received as Defendants' exhibit C for identification.)

Q. (By Mr. Greenstein): Mr. Muramoto, I will show you what has been marked Defendants' ex-

(Testimony of Raymond Y. Muramoto.)

hibit C for identification and ask you whether or not that card bearing the name Ray's Shell Service refers to your organization? A. Yes.

Q. And were those cards the cards that you agreed to offer 10,000 of? A. Yes.

Mr. Greenstein: Offer that in evidence.

Mr. Langa: No objection, your Honor.

The Court: It will be received as Defendants' exhibit C. [28]

(The document referred to was received in evidence as Defendants' exhibit C.)

Mr. Greenstein: No further questions.

Redirect Examination

Q. (By Mr. Langa): Mr. Muramoto, did you sign this contract in reliance upon the representations made to you by the Defendants which you have already testified to? A. Yes.

Mr. Langa: No further questions.

Recross Examination

Q. (By Mr. Greenstein): You signed the contract to get 10,000 prospective customers, didn't you? A. Yes.

Mr. Greenstein: No further questions.

Mr. Langa: No further questions.

The Court: You may step down, Mr. Muramoto.

Mr. Langa: Mrs. Studebaker.

GRACE STUDEBAKER

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Please state your name and occupation?

A. Grace Studebaker. I am manager of the Arthur Murray Studio, Waikiki.

Q. The dancing studio? A. Yes.

Q. Have you ever met either Mr. Lemon or Mr. de Bruin?

A. Yes, I have met both of them.

Q. Are they in this room?

A. Yes, the two of—

Mr. Greenstein: Stipulate to the identification.

Q. (By Mr. Langa): Has either or both of these men ever approached you with a promotion plan involving the Honolulu Customers Checkbook?

A. Yes.

Q. Did they make any representations to you as to the method by which the Honolulu Customers Checkbook would be promoted?

A. Yes, they did.

Q. What did they say?

A. I did question how they would promote this, and they said, well, it would be general advertising, T.V. and so forth, in a very general manner.

Q. And in reliance upon that representation did you enter into an agreement with them?

A. Yes, I did. [30]

(Testimony of Grace Studebaker.)

Q. An agreement involving the Honolulu Customers Checkbook? A. Yes.

Q. And this was about when, if you recall?

A. It was the beginning of the summer, but I can't tell you the exact month.

Q. Now, what is the general policy of Arthur Murray's Studio in regard to introductory lessons for new students?

A. Anyone who comes into the Studio gets a half-hour free lesson, dance analysis.

Mr. Langa: I have no further questions.

Mr. Greenstein: May I have this marked for identification?

The Court: Defendants' D for identification.

(The document referred to was received as Defendants' exhibit D for identification.)

Cross Examination

Q. (By Mr. Greenstein): May I show you what has been marked as Defendants' exhibit D for identification, and ask you if it bears your signature?

A. This does.

Q. And the signature of Mr. de Bruin?

A. That is right.

Q. And this calls for the Arthur Murray School [31] of Dancing obligating itself to honor 5,000 coupons? A. Yes.

Mr. Greenstein: Offer it in evidence.

Mr. Langa: Your Honor, I object at this time, inasmuch as it is not related to the direct examination. Later in the proceedings it may be proper,

(Testimony of Grace Studebaker.)

but it is not within the scope of the direct examination.

The Court: You asked the witness, Mr. Langa, if they entered into an agreement on direct examination, and here is the agreement. The objection is overruled. The document will be received as Defendants' exhibit D.

(The document referred to was received as Defendants' exhibit D in evidence.)

Q. (By Mr. Greenstein): Now, didn't they tell you they would use telephone solicitation?

A. No, they did not.

Q. Are you sure about that?

A. Yes, I am.

Q. Did you care what method of solicitation was used?

A. If it were telephone, yes, because I have my own telephone room.

Q. You do your own telephone solicitation?

A. Yes, that is right.

Q. In connection with offering free——

A. That is true. [32]

Q. Well, would it make any difference if they used newspapers or T.V.? A. No.

Q. Were any coupons ever presented to your establishment?

A. Yes, they did bring a sample booklet.

Mr. Greenstein: May I have this page marked for identification.

The Clerk: Defendants' E for identification.

(Testimony of Grace Studebaker.)

(Document referred to was received as Defendants' E for identification.)

Q. (By Mr. Greenstein): Showing you what has been marked for identification as Defendants' exhibit E, I will ask you if this is the coupon we have referred to in your testimony? A. Yes.

Q. And was that sample agreed upon at the time of the signing of the agreement with them?

A. They brought this to me later and I agreed that it was all right.

Q. In other words, you approved of this particular coupon? A. Yes, I did.

Mr. Greenstein: No further questions.

Mr. Langa: No questions. [33]

The Court: You are excused.

AL KARASICK

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you please state your name and occupation?

A. Al Karasick, Sports Promoter, manager, Civic Auditorium.

Q. Do you know Mr. Lemon or Mr. de Bruin?

A. I met Mr. Lemon three times.

Q. Is he here?

Mr. Greenstein: We will stipulate to the identification.

The Court: Very well.

(Testimony of Al Karasick.)

Q. (By Mr. Langa): Has Mr. Lemon ever approached you with a plan for promotion of the Honolulu Customers Checkbook? A. Yes.

Q. Did he explain his plan to you?

A. Yes, sir.

Q. Did he advise you that it was part of his plan to sell the Customers Checkbook by telephone solicitation?

Mr. Greenstein: I object to that as being leading and suggestive.

The Court: Sustained.

Q. (By Mr. Langa): Did he tell you in what way the [34] thing was to be promoted?

A. He showed me an agreement, and after I read that agreement I signed it.

Q. Did he advise you of the methods that would be used for distribution?

A. Well, according to the agreement.

Q. And what is that?

A. Well, just what the agreement reads.

Q. Do you have your agreement with you?

A. Yes, sir.

Mr. Langa: Your Honor, I offer this contract between Honolulu Customers Checkbook and Al Karasick.

The Court: It will be received as exhibit—

The Clerk: 4, your Honor.

(The document referred to was received as Plaintiff's exhibit 4 in evidence.)

Q. (By Mr. Langa): Showing you Plaintiff's exhibit 4; now, explain to us what you meant by

(Testimony of Al Karasick.)

your answer to the question as to the distribution of the Checkbook?

A. Well, the books were distributed among—how they sold them, how they got—I don't know, but they came with the coupons, and they tore the coupons out of the book at the window and gave the ticket. Anybody who buys a ringside seat and presents a coupon, we give them one free one as a matter of advertising, only. [35]

Q. I think, Mr. Karasick, you don't understand my question. I am asking you whether anything was said about how the—was it Mr. Lemon or Mr. de Bruin that you talked to?

A. I talked to Mr. Lemon.

Q. Was anything said as to how Mr. Lemon would distribute the coupons to people who would use them?

A. He told me according to the contract, after I read it.

Q. What do you mean by that?

A. Exactly what it said in the contract. That is what I agreed to do. I agreed to, according to contract, and I signed it, and I agreed to it, to the contract. That is the only conversation we had.

Mr. Langa: Your Honor, I submit that it is going to be necessary to lead the witness.

The Court: Did you have any conversation prior to the agreement——

The Witness: No. He came to ask me about the deal. He showed me the book and I accepted, and I signed the agreement.

(Testimony of Al Karasick.)

The Court: There was no conversation?

The Witness: That is all the conversation we had. The whole matter took only five minutes.

Mr. Langa: That is sufficient explanation. No further questions. [36]

The Court: Don't keep the agreement, now. It has been received in evidence, Mr. Karasick. The Court Clerk will hold it.

Mr. Greenstein: Would you mark two coupons? We ask that they be marked for identification.

The Court: Is there any objection to their admission to save time?

Mr. Greenstein: I want to offer them all at one time, because it is a book of coupons.

The Court: Well, I know, but these two particular coupons—show this to Mr. Langa.

Mr. Langa: I think we can stipulate that this is one of the coupons that was distributed by the Honolulu Customers Checkbook.

Mr. Greenstein: It may be stipulated.

Mr. Langa: I think that is sufficient.

The Court: Very well. Those may be received as F-1 and F-2.

(The documents referred to were received as Plaintiff's exhibits F-1 and F-2 in evidence.)

Mr. Greenstein: May I make the same offer on this? We only had exhibit E marked for identification. I neglected to have it received in evidence.

The Court: Very well. That will be received as Exhibit E. [37]

(The document referred to was received as Plaintiff's exhibit E in evidence.)

Mr. Greenstein: I have no further questions.

The Court: You are excused, Mr. Karasick.

Ladies and gentlemen of the jury, before excusing you, you are instructed not to discuss this case with any one, allow no one to discuss it with you, avoid reading or hearing anything about it, and form no opinions about it. You are excused until 2:00 o'clock this afternoon.

(At 12:00 o'clock noon an adjournment was taken until 2:00 o'clock p.m. this same afternoon.) [38]

December 1, 1958 at 2:00 P.M.

The Court: The record will show the jury is present and the Defendants and their counsel. Will you call your next witness, Mr. Langa.

Mr. Langa: Mrs. Mitchell.

BETTY MITCHELL

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you state your name and address and occupation, please.

A. Betty Mitchell, 2401 Kalakaua, Surf and Shore. It is a dress shop, shirt shop.

Q. You operate the Surf and Shore Shop?

A. Yes.

(Testimony of Betty Mitchell.)

Q. In your store, Mrs. Mitchell, do you ever give discounts on sales of merchandise?

A. We give them a dollar off after they have spent \$10.00.

Mr. Langa: I see. I have no further questions.

Mr. Greenstein: We would like—may we be permitted to ask whether this witness has had any dealings with customers service? [39]

The Court: I have no idea how Mr. Langa has prepared his case. Nor am I asking him how he is going to present it. I assume that these bits of evidence, or evidence such as this, could be tied in; otherwise, Mr. Langa wouldn't offer it.

Mr. Greenstein: Well, we give notice to the Court we shall call this witness as our own witness. May she be directed to return at 2:00 o'clock tomorrow or subject to our call?

The Court: How is your case progressing?

Mr. Langa: I think, your Honor, we probably will be through by noon tomorrow.

The Court: Very well. Mrs. Mitchell, will you return tomorrow afternoon at 2:00 o'clock.

Mr. Greenstein: Thank you, your Honor.

Mr. Langa: Mr. Furuya.

SATOSHI FURUYA

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you state your name and occupation, please?

(Testimony of Satoshi Furuya.)

A. My name is Satoshi Furuya. I am manager of the Nippon Theater.

Q. Do you know the Defendants in this case?

A. I am not quite sure. [40]

Q. Have you met Mr. Lemon?

A. I think I met him, but just once.

Q. Can you see him in the room now, the man you think you met?

A. Well, I think it is him, but it is so short time that I am not too sure.

Q. I see. How about Mr. de Bruin?

A. I think both of them was there, I believe.

Q. Did they explain to you a scheme for the promotion of a coupon book? A. Yes.

Q. This was about how long ago, do you know?

A. Gee, I can't remember how long it was. I think it was—I am not sure.

Q. Two months?

A. Or more than a month.

Q. More than a month. Maybe early in the summer? A. Yes.

Q. Did they in explaining the plan to you explain how they were going to—they proposed to give coupons to people?

A. Yes, they did. They told me that they will sell it for, I believe it was three and a half, or something like that, by house to house campaign.

(Testimony of Satoshi Furuya.)

Q. Did they say anything to you about [41] telephone solicitation? A. No.

Mr. Langa: No further questions.

Cross Examination

Q. (By Mr. Greenstein): I take it you entered into a contract or agreement with the Customers Checkbook? A. Yes, I have.

Q. And is this a copy of the agreement you signed with Customers Checkbook Company?

A. That is right.

Mr. Greenstein: Offer it in evidence, if the Court please, the next in order.

Mr. Langa: No objection.

The Court: It will be received as exhibit G.

(The document referred to was received as Defendants' exhibit G in evidence.)

Q. (By Mr. Greenstein): Now, you agreed to honor 10,000 coupons, did you not? A. Yes.

Q. You were interested in attracting patrons to your theater, were you not? A. Yes.

Q. When you signed up with the Honolulu [42] Customers Checkbook Company you didn't think you were doing anything wrong, did you?

A. No.

Q. Did they show you the coupons, a sample of the coupons? A. Yes.

Q. And are these the coupons? A. Yes.

The Court: How many are there? Two?

(Testimony of Satoshi Furuya.)

Mr. Greenstein: There are two in this book, your Honor. And we offer these in evidence.

The Court: They will be received as exhibit H-1 and H-2.

(The documents referred to were received as Defendants' exhibits H-1 and H-2 in evidence.)

Q. (By Mr. Greenstein): And you were ready to honor those coupons, were you not?

A. Well, as far as anybody came in, yes.

The Court: What was the answer?

The Witness: Yes, if it is legal to accept the coupons.

The Court: If it is legal to accept them?

The Witness: Yes, if it is legal.

Q. (By Mr. Greenstein): And at the time that you [43] entered into this agreement with Mr. Lemon or Mr. de Bruin you were prepared to honor as many as 10,000 of these coupons?

A. Well, I started about 3,000. They said, "How about taking out more?" So we thought about 5,000, I think it was. Then they say, "Why not make it 10,000?" And I thought—I didn't know how many people use the coupons. They said they didn't know. So we say OK.

Q. But nevertheless, you signed an agreement to honor 10,000; is that correct? A. Yes.

Mr. Greenstein: No further questions.

Mr. Langa: No further questions.

The Court: You are excused.

Mr. Langa: Mr. Higa.

(Testimony of Thomas Higa.)

A. Yes.

Q. Yes. And you signed an agreement covering both businesses, didn't you? A. Yes, sir.

Q. An agreement covering your Ala Wai Boat Rental business? A. Right.

Q. And an agreement covering your voice recording business; isn't that true? A. Right.

Q. Do you remember how many coupons you agreed to honor? A. Yes.

Q. How many?

A. These came back. They brought in the coupons.

Q. You are holding in your hand coupons that you honored?

A. That is right, some free rides, free recordings.

Q. Would you mind letting me see them, please?

(The witness hands documents to counsel.)

Mr. Greenstein: We would like to offer them into evidence.

Mr. Langa: I have no objection.

The Court: How many coupons are there? [47]

Mr. Greenstein: Eight coupons and a rubber band, your Honor.

The Court: They will be received as exhibits I-1 through I-8.

(The documents referred to were received as Plaintiff's exhibits I-1 through I-8 into evidence.)

Q. (By Mr. Greenstein): Mr. Higa, I observe

(Testimony of Thomas Higa.)

you are holding two pieces of paper. Are those copies of the two contracts you signed?

A. Yes, that is right.

Mr. Greenstein: May I have them, please?

(Documents handed to counsel.)

Mr. Greenstein: Offer them in evidence.

Mr. Langa: No objection.

The Court: They will be received as exhibits J-1 and J-2.

(The documents referred to were received as Plaintiff's exhibits J-1 and J-2 into evidence.)

Mr. Greenstein: Now, when you signed that agreement, Mr. Higa, you had agreed to honor 5,000 coupons in connection with your boat rental business before you agreed to honor 5,000 coupons with respect to your voice recording business?

A. Yes. [48]

Q. And that was for the purpose of promoting your businesses, bringing in new customers?

A. Yes, that is right.

Q. At that time did you think you were doing anything wrong?

A. No, I didn't think there was anything wrong.

Q. Now, you weren't concerned with how these coupons were distributed, were you?

A. I beg your pardon?

Q. You didn't care how these coupons would be distributed, whether by direct sale or telephone?

A. Distribute the coupons, the two gentlemen, they are going to take care of, see.

Q. In other words, you left it up to the De-

(Testimony of Thomas Higa.)

endants to take care of how they would pass these to the public? A. That is right.

Q. You weren't particularly interested in the medium they would employ?

A. I beg your pardon?

Q. You weren't interested in how or what means they would use to pass these on to the prospective customers; isn't that right?

A. I believe they were saying they used the radio, television and house to house and newspaper advertising, see. That is I agreed to that. [49]

Q. You were interested in having people come to your place? A. That is right.

Q. And you were interested in having them come with these coupons, weren't you?

A. That is right.

Mr. Greenstein: No further questions.

Mr. Langa: No further questions.

The Court: You are excused, Mr. Higa. Thank you.

Mr. Langa: Martha Ann DeCayette.

MARTHA ANN DeCAYETTE

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you state your name and address for the record, please?

A. My name is Martha Ann DeCayette, 1881 Kalakaua Avenue.

(Testimony of Martha Ann DeCayette.)

Q. Now, Mrs. DeCayette, have you ever met Mr. Lemon or Mr. de Bruin? A. Yes, I have.

Q. Do you know them both?

A. Personally, no.

Q. Do you know who they are? [50]

A. Yes, I do.

Q. Are they here in this room?

A. Yes, they are.

Q. Please point them out.

A. That is Mr. Jack Lemon sitting on my far left and Mr. Martin de Bruin is sitting in the middle.

The Court: The record will show the witness has identified the Defendants.

Q. (By Mr. Langa): When did you first meet these two men?

A. I believe it was in June of this year.

Q. Please tell us the circumstances under which you met them?

A. I was working for them as a telephone operator.

Q. I see. Where was this?

A. At the Merchandise Mart Building.

Q. What was your job while you were working for them as a telephone operator?

A. Well, I had applied for the job from the newspaper, and I had gone up to the Merchandise Mart Building and applied for it. And we had a sales speech to say over the phone in which—I mean it was stated that—to answer a question, and

(Testimony of Martha Ann DeCayette.)

if you have answered it correctly, I mean, there were several things that would be given to you.

Q. Mrs. DeCayette, I am showing you a piece of paper [51] with typewriting on it and some various other notations. Can you identify this piece of paper?

A. Yes. This is the sales speech.

Mr. Greenstein: I can't hear the witness.

The Court: You will have to keep your voice up.

The Witness: This is the sales speech that the operators read from.

Mr. Langa: I see. Your Honor, I offer this in evidence.

Mr. Greenstein: No objection.

The Court: It will be exhibit number 5.

(The document referred to was received in evidence as Plaintiff's exhibit number 5.)

Q. (By Mr. Langa): Now, is this the same sales pitch you used all the time that you were working for the Defendants?

A. Well, it was changed later on. I mean there were new business men that had gone into it. I mean there were several changes, but not too very many. But that is the same sales speech.

The Court: Is that the same as the one from George's Service Station?

Mr. Langa: There is a slight difference, your Honor. This one begins, instead of saying, "This is George's Service," it starts out, "This is Honolulu Customers Checkbook calling." It lists some different items. [52]

(Testimony of Martha Ann DeCayette.)

The Court: Why don't you just read it?

Mr. Langa: Shall I?

The Court: Yes.

Mr. Langa: I have been trying to refrain simply to save time.

The Court: I thought if it was somewhat different from the other one it might be interesting.

Mr. Langa: This sales pitch reads as follows: This is reading from Plaintiff's exhibit number 5. At the top as on the other one it starts out, "Do not take orders from children. For call backs give this telephone number, 68079. It reads as follows:

"Hello, is this number" blank?

"This is Honolulu Customers Checkbook calling and I have some wonderful news for you. If you can answer the following question correctly, you will have the opportunity to receive a Customers Checkbook worth over \$50 in useful car services, entertainment tickets and free gifts.

"Are you ready for the question?

"1. What is the second largest district on the Island of Oahu?

"Answer. Wahiawa or Kailua.

"I'm sorry, the answer is the City of Wahiawa or Kailua, but since you have tried so hard we will give you another question. [53]

"2. In which hand does the Statue of Liberty hold the torch?

"Answer. Right.

"Well, congratulations. Now you will receive the following:

(Testimony of Martha Ann DeCayette.)

"One free pizza from Larry Vincentes.

"Two free dance lessons from Arthur Murrays.

"Free boat ride.

"One year's subscription to Sports Extra Magazine.

"Free ticket to wrestling matches.

"Free T.V. service call.

"Free 5 x 7 silvertone photograph of your child.

"And for your car you will receive:

"Two free grease jobs.

"Free car wash.

"Free flat tire repair.

"Free battery charge.

"Free brake adjustment.

"Free tire rotation.

"Free wheel bearing packed.

"Free radiator flush.

"Your points cleaned and set and many other valuable services.

"Now, these are only a few of the many wonderful values offered by 20 of your local business men who have gone [54] to a great expense in order to acquaint you with their places of business. The only cost to you is \$4.75 for printing and handling cost of your Customers Checkbook. In all, you do receive over \$50 in useful values. These books are limited to one per family, and they will be delivered by your mailman C.O.D. Do I have the right address, Mrs." and a blank.

"Now, your Checkbook will be delivered to you next week. You understand when your mailman

(Testimony of Martha Ann DeCayette.)

brings your Customers Checkbook you pay him only \$4.75. The business men want and respect your patronage and we wish you a good time, so take advantage of these wonderful offers in the Honolulu Customers Checkbook.

“Thank you and goodbye.”

And then below the sales pitch it says—this was an addition which was not on the other one—“Mention only the offers above. The above services are offered for \$4.75.” Your Honor, this is a portion of this bottom which is missing. I take it from this it is, “Do not tell the people they win the services.”

Would you care to put that in instead of this?

The Court: Is that a better copy?

Mr. Langa: I will stipulate to offer that in evidence.

Mr. Greenstein: Yes. That may go in.

Mr. Langa: That is a better copy. [55]

The Court: That one may be substituted for the other as exhibit number 5.

Mr. Langa: Your Honor, they are not exactly alike in that there are some other comments in pencil aside from the typewritten words. I would suggest that both go in.

The Court: Very well. Make them 5-1 and 5-2, or 5-A and 5-B, rather.

Q. (By Mr. Langa): Did anyone Mrs. DeCayette, give you any instructions on how to proceed in your job?

A. Well, I was a night telephone operator, and when I first went in there to apply for the job, I

(Testimony of Martha Ann DeCayette.)

had the shift that worked from 3:00 to 9:00, and there was a girl there, I believe she was the secretary, Virginia, that gave me some sort of instructions as to what to do. But mostly they based it on the speech—I mean the sales pitch. That is what I was to say over the phone, and that was about all.

Q. And while you were working at your job did you ever see Lemon or de Bruin in the——

A. Oh, on several occasions, but they were always in another room. I mean we were in the room, the telephone operators were in a room alone by ourselves.

Q. About how many telephones were in the room?

A. I would say about 10, I believe.

Mr. Langa: I have no further questions. [56]

Cross Examination

Q. (By Mr. Greenstein): Approximately when was it that you were first employed by Lemon and de Bruin, please?

A. I believe it was either the ending of May or beginning of June. I am not quite too sure.

Q. And I take it you were one of the girls that were engaged in soliciting orders on the telephone?

A. That is right.

Q. Now, before you commenced your actual work of using the telephone, weren't you given general instructions that you were to follow the sales pitch as was printed before you?

A. Well, like I said, I mean when I first started

(Testimony of Martha Ann DeCayette.)

there, there was another telephone operator sitting beside me, Verna May Chung, and Virginia, she was the secretary at that time on the night shift, I guess, just said to say what the paper was before me.

Q. Yes. In other words, you had a typewritten sales pitch in front of you, such as is in evidence; right?

A. That is right.

Q. And you were told to read from this typewritten piece of paper, is that correct?

A. Yes.

Q. And weren't you specifically instructed by somebody, whoever it might be, that under no circumstances were you to tell any of the prospective purchasers that they were winning anything? [57]

A. Yes. I mean I was told by Virginia that they didn't win it.

Q. They would just be entitled to receive something?

A. That is right.

Q. Now, in connection with the various sales pitches that you made on the telephone—and I assume you made some?

A. Yes.

Q. Did you ever fail to tell a prospective customer that what they were getting they would be charged a specific amount of money for; did you always tell the customer it would cost them \$4.95, whatever the price was?

A. For the Customers Checkbook, yes.

Q. Did you always inform the customer that the Customers Checkbook would be delivered to them C.O.D. and they would have to pay a C.O.D. charge?

(Testimony of Martha Ann DeCayette.)

A. By the mailman.

Q. Yes. They had to pay the mailman. There is no question about that in your mind?

A. No.

Q. Is it fair to say that as well as you remember you followed the language of the sales pitch which was before you in front of the telephone, is that right? A. Yes.

Q. How long did you work for Lemon and de Bruin? [58]

A. I think it was a week and two days, I am not sure.

Q. I see. And how were you girls to be paid; how were you to be paid?

A. Every two weeks.

Q. I beg your pardon?

A. Every two weeks.

Q. On a salary or commission basis?

A. Commission basis.

Mr. Greenstein: No further questions.

Mr. Langa: I have no further questions.

The Court: You may step down. Thank you.

Mr. Langa: Mrs. Chung.

VERNA MAY CHUNG

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you please tell us your name and address, please?

(Testimony of Verna May Chung.)

A. My name is Mrs. Verna May Chung, 1819 Houghtailing Road.

Q. Have you ever met Lemon or de Bruin?

A. Yes, I have.

Mr. Greenstein: We will stipulate she was an employee of theirs. [59]

The Court: Very well.

Q. (By Mr. Langa): Do you recall the circumstances under which you became an employee of the Defendants?

A. Well, I answered an ad that was in the paper. The ad stated that they wanted telephone survey girls, and if you qualified you would—there was a salary of \$1.00 an hour—says a \$1.00 an hour if you qualified, and says to apply at Merchandise Mart Building in Room 203, I believe, to see Mr. Lemon.

Q. Did you see Mr. Lemon there?

A. Yes. The first day that I went up to the Merchandise Mart Building I saw Mr. Lemon, but I didn't talk to him directly. I spoke to, I believe it was Judy or some other—there was another girl there—Judy was the first secretary, I think, and then later on Virginia.

Q. What happened then?

A. Well, I walked into the room and out in the hallway stood the other girls. They were also answering the ad in the paper. So I walked in and I spoke to Judy and I told her I was answering the ad and I was looking for Mr. Lemon. So she gave me a pencil and piece of paper and she said

(Testimony of Verna May Chung.)

to jot our name down on a piece of paper before us. So before I left I asked her when we would be called, and she asked me if I had any experience with the telephone. I told her a little. So she gave me—she just told me—she took me [60] to another room and she gave me a torn telephone page and sales pitch and sales pitch and just went over the sales pitch with me roughly and made me sit in a room for the first day.

Q. I show you Plaintiff's exhibits number 1, 5-A, and 5-B. Is that the telephone pitch you used?

A. Yes, it is.

Q. During the period that you were working for the Defendants on the telephone there did you use both forms of that sales pitch, both the yellow paper form and the white, the yellow being exhibit 1?

A. I used the white one.

Q. Do you remember the yellow one at all?

A. No. But the pitch seems to be the same. But I haven't used—I didn't use the other one.

Q. I am not referring now to the certain piece of paper, but the words it has?

A. No, I didn't use the yellow one.

Q. Now, subsequent to the time you started working did you receive any further instructions as to how to perform your job?

A. No, just follow the sales pitch.

Q. And did you receive any instructions on how to handle complaints?

A. Well, at first Mr. Lemon and—we would go in and call Mr. Lemon, or Virginia would come in

(Testimony of Verna May Chung.)

and handle the complaint. [61] And then later on we were instructed to leave the phones off the hook after we got through calling each customer that day. Then later on we were instructed, when the complaints were coming in by a whole flock, we were instructed to say that—talking a pidgin language and just say, “I am just the janitress and I don’t understand.”

Mr. Langa: I have no further questions.

Cross Examination

Q. (By Mr. Greenstein): Was this after the newspapers had given a lot of publicity to this business? A. No, that was before.

Q. Are you sure?

A. That was around the third—started the third week I worked there, the third and fourth week.

Q. The third week?

A. The third or fourth week.

Q. Or was it the fourth week?

A. About the fourth week.

Q. It was the fourth week, wasn’t it? And wasn’t it after the third week that various people tried to put them out of business?

A. Would you mind repeating what you said?

Q. You say these complaints started to come in pretty heavy after the fourth week, is that correct? [62]

A. Yes.

Q. Wasn’t it after the third week that they were

(Testimony of Verna May Chung.)

in business that people were trying to put them out of business?

A. Well, that I can't say, but there were a few complaints coming in.

Q. But your job was as a telephone girl?

A. Yes.

Q. Right. And I take it you followed your instructions? A. Yes.

Q. You followed your instructions by informing everybody there would be a charge for the Customers Checkbook; right? A. Right.

Q. And that they would have to pay for it through the process of the use of the mails and C.O.D.; right? A. Right.

Mr. Greenstein: No further questions.

Mr. Langa: No questions.

The Court: You may step down. Thank you.

Mr. Langa: Miss Houston.

PATRICIA HOUSTON

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows: [63]

Direct Examination

Q. (By Mr. Langa): Would you please state your name and address?

A. Patricia Houston, 244 Robinson Avenue, Pearl City, Oahu.

Q. And your occupation?

A. I am in school.

Q. Now, Miss Houston, have you ever had occa-

(Testimony of Patricia Houston.)

sion to work for the Defendants in this case as an employee? A. Yes, I have.

Q. Mr. Lemon and Mr. de Bruin?

A. Yes.

Q. Are they in the room?

A. Yes. Mr. Lemon is on my extreme left and Mr. de Bruin is sitting right next to them.

The Court: The record will show the witness has identified the Defendants.

Q. (By Mr. Langa): What was the nature of your employment?

A. Well, I worked on the telephone. I called up the people that we sold the checkbooks to.

Q. I see. And did you use a typewritten script in selling the checkbooks? A. Yes, I did.

Q. Showing you Plaintiff's exhibits 1, 5-A and 5-B, is that the script that you used, or is that a copy of a [64] script that you used?

A. The white one. I mean I didn't use the yellow one.

Q. Were you given any instructions on the use of that script and generally performing your job?

A. Well, when I started working there, they gave me the piece of paper, that white one, and some other little pieces of paper that you write down the name and address on, and a pencil, and they sat me down and they just told me that I should read what was on the paper, just how it was written on the paper. And then I don't think anything else

(Testimony of Patricia Houston.)

from them, but I heard the other girls, they would tell me, like, "Don't tell them that you are selling anything and that they won anything." And they were the ones that told me that I would get \$.50 for each one I sold.

Q. Do you recall Mr. Lemon giving you any advice on this question of performing your job or what to tell the customers?

A. Just read the paper.

Q. I didn't hear the answer.

A. Just to read the paper.

Q. Did you receive any instructions on what to do about complaints?

Mr. Greenstein: I am going to object to that as being immaterial, if your Honor please, doesn't tend to prove [65] or disprove any of the issues of the indictment.

The Court: I think that is right, Mr. Langa. The other testimony went in without objection.

Mr. Langa: Your Honor, it is only offered as tending to show the state of mind of the Defendants. I don't offer it as a central portion of the testimony, and I withdraw the question, if it will make the Defendants happier.

The Court: Very well.

Mr. Langa: I have no further questions.

Mr. Greenstein: No questions.

The Court: You may step down, Miss Houston.

Mr. Langa: Miss Miller.

SYLVIA ANN MILLER

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): State your name and occupation, please?

A. Sylvia Ann Miller, 3110 Huelani Drive, and I am a student.

Q. Have you ever been employed by Mr. Lemon or Mr. de Bruin? A. Yes.

Q. State the nature of your employment?

A. I more or less was a telephone operator. [66]

Q. Will you tell us specifically the circumstances of your hiring on and what you were doing as a telephone operator?

A. Well, I presume you mean the day I got the job. Well, I walked in on a conversation, really, and I just stood there for a few minutes until they got through talking. And then Virginia——

Q. Pardon me for interrupting you, but who is this?

A. Well, I don't know. I am not sure which man it was, but it was either Mr. Lemon or Mr. de Bruin who was talking.

Q. Was it either of the gentlemen sitting at this table to my right? A. Yes.

Q. It was one of them? A. Yes.

Q. But you don't know which it was?

A. No, I am not sure which one.

Q. Please go on.

A. And then Virginia took me into the next

(Testimony of Sylvia Ann Miller.)

room and she sat me down and told me to read whatever was on the paper over the telephone. And she also mentioned that even if they gave a different answer from the one that was on the paper to just say, oh, it was right, anyway. And that was more or less what she said, in those words. And then I sat down and started to phone. [67]

Q. This was about how long ago?

A. This was approximately on June 9th or 10th, I think.

Q. And did you use a typewritten script on the telephone? A. Yes.

Q. Would you look at those exhibits 1, 5-A and 5-B, which are by the witness stand there?

A. I recognize both of the white ones but not the yellow one.

Mr. Langa: I have no further questions.

Mr. Greenstein: No questions.

The Court: You are excused, Miss Miller.

The Witness: Thank you.

Mr. Langa: May I have a moment, your Honor?

The Court: Yes.

Mr. Langa: Your Honor, I think if I call any more of the telephone girls now it will be repetitious. I have four other witnesses who were subpoenaed for tomorrow morning. I was very surprised by the speed with which this afternoon's session has gone.

The Court: Mr. Greenstein might stipulate that if more telephone operators were called they would

testify in a manner similar to the last two. Is that true?

Mr. Greenstein: Well, I was thinking that perhaps my colleague here was asking that this matter stand over to [68] tomorrow morning, and I was ready to join with him. We have both gone faster than anticipated from the standpoint of availability of the witnesses.

Mr. Langa: I have only four more witnesses, all of whom I don't think I could get until tomorrow morning. I haven't heard from one yet as to whether he has a ride. But if it is acceptable to the Court and to Mr. Greenstein, why, all of them are subpoenaed for tomorrow morning.

The Court: At what time?

Mr. Langa: 10:00 o'clock. Oh, I have one witness I can put on out of order now, your Honor, the United States Marshal. I would be glad to do that.

The Court: Very well. You mean Mr. Clark or one of his deputies?

Mr. Langa: Mr. Clark. I have just been informed that the witness I had sent out for if the Court please, will not be able to be here. They haven't found him yet. So aside from Mr. Clark, why, I would like to continue with the rest of my witnesses tomorrow instead of today.

The Court: How long do you anticipate their testimony will take?

Mr. Langa: Well, if it goes like this afternoon, I think all four of them in an hour.

The Court: Are they persons named in the indictment? [69]

Mr. Langa: Yes, your Honor. I expect them to testify to the telephone calls and the mail which they received.

THOMAS R. CLARK

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you state your name and occupation for the record, please?

A. Thomas R. Clark, United States Marshal, District and Territory of Hawaii.

Q. Now, Mr. Clark, may I call your attention to June the 27th or thereabouts of this year, did you have occasion to execute a search warrant and seize some property from the Postmaster at Honolulu? A. I did.

Q. And would you tell us the nature of that property?

A. Upon receipt of the search warrant I contacted Mr. Lino, Albert P. Lino, the Postmaster of this City in this building, and apprised him of what I had. And he assured me that he would have all the letters together. And on the 14th of July I made seizure of 1,874 C.O.D. letters which are now contained in those six pouches. And I have had those six pouches in my custody since that date.

Q. These C.O.D. letters which you seized were letters bearing the return address, Honolulu Custo-

(Testimony of Thomas R. Clark.)

mers Checkbook, 204 Merchandise Mart, and addressed to various people in Honolulu?

A. Yes.

Mr. Greenstein: I think that is a little bit leading, your Honor.

The Court: Yes, it is leading.

Q. (By Mr. Langa): Well, did the search warrant carry a description of the property which you seized? A. It did.

Q. How was that described?

A. Well, I can't repeat it verbatim now.

Q. Just generally speaking, if you will, just tell us enough so that we know approximately what it was that you were seizing?

Mr. Greenstein: May I interpose an objection to this unless the U. S. Attorney represents that these pieces relate to specific counts of the indictment; otherwise, I see no materiality, except one, to inflame and prejudice the jury.

The Court: What do you have to say on that?

Mr. Langa: Your Honor, the indictment charges a scheme to defraud.

The Court: Is that for the purpose of showing state of mind? [71]

Mr. Langa: The overall plan or scheme.

The Court: It will be received for that limited purpose, and the objection is overruled. Now, do you recall the question, Mr. Clark?

The Witness: No, I don't. Please repeat the question.

The Court: Describe as best you can what you

(Testimony of Thomas R. Clark.)

were supposed to seize under the search warrant?

The Witness: I was supposed to seize C.O.D. letters addressed to the various addressees which came from the Honolulu Customers Checkbook, 204 Merchandise Mart, Honolulu, Territory of Hawaii.

Q. (By Mr. Langa): Do you know offhand how many bags there are in the property you have referred to, the pouches you have referred to?

A. Six.

Q. Six of them all together? A. Yes.

Mr. Langa: Your Honor, I offer these six pouches of mail for the limited purpose previously mentioned.

Mr. Greenstein: Well, I object, your Honor. I can't see any purpose that would be subserved by bringing in these six pouches into evidence. I think the oral testimony is sufficient. It is my opinion they are being used only for the purpose of being prejudicial and inflammatory. [72]

The Court: Do you have any further examination of this witness, Mr. Langa?

Mr. Langa: I have no further questions for this witness.

The Court: I will reserve ruling on that offer. Do you have any cross examination, Mr. Greenstein?

Mr. Greenstein: Yes, just one or two questions.

Cross Examination

Q. (By Mr. Greenstein): These letters all came from the Registry Department of the United States Postoffice or part of the C.O.D. Department?

(Testimony of Thomas R. Clark.)

A. I couldn't say they came from the Registry Department, but they came from the Postmaster's office.

Q. Came from the Postmaster's office?

A. That is right.

Q. Did they all bear recordation from the C.O.D. Department? A. Yes.

Q. Did they all show that the cost by the government for C.O.D. was paid?

A. On the face of each individual, yes.

Q. Do you know how much that cost is?

A. Well, there were different figures. They ran from \$2.95. [73]

Q. No, I mean the Postoffice charge. I don't mean the amount to be collected?

A. I don't follow you.

Mr. Greenstein: Withdraw it. I have no further questions.

Mr. Langa: No further questions.

The Court: You are excused, Mr. Clark.

Mr. Langa: Your Honor, may we have a recess until tomorrow morning at 10:00?

The Court: I would like to keep going on, but if you have no witnesses, there is very little we can do.

Mr. Langa: Your Honor, I made a mistake in dating my subpoenas. I didn't realize it would go this fast. These four people all have jobs and are difficult to call on such short notice.

The Court: Well, ladies and gentlemen of the jury, you are going to get a bonus. Perhaps you can go out and do a little early shopping. You are instructed not to discuss this case with anyone, allow no one to discuss it with you, avoid reading or hearing anything about it, and form no opinions about it. You are excused until 10:00 o'clock tomorrow morning.

Mr. Greenstein: Your Honor, before the jury is excused, for the purpose of the record may I move that the postal cart with these six pouches be removed from the Courtroom [74] and not be permitted to make entry back to the Courtroom unless they are admitted in evidence.

The Court: I am going to discuss that with counsel after the jury leaves. You are excused.

(The jury leaves the Courtroom.)

The Court: That is a nice question, Mr. Langa, on your offer of 1,874 letters of this type.

Mr. Langa: I am not sure I know what the question is.

The Court: Well, whether it is admissible even for the limited purpose that you offer it.

Mr. Langa: I think, really, the question is that although it is certainly admissible for that purpose there may be other purposes, also. But the indictment, among other things, charges that the Defendants conceived a scheme, device, a scheme and artifice to defraud that involved carrying on a business of soliciting orders for checkbooks by the use of

the telephone and soliciting orders from persons to be defrauded and making delivery of the Honolulu Customers Checkbook by means of the use of the United States Postal Service. Now, the overall nature of the scheme is larger than four pieces of mail that have been put into the postoffice—actually five pieces of mail were charged. Simply because, as a technical requirement of the statute, specifically identified pieces of mail have been put in; however, this [75] indictment could involve 1,874 counts in addition to those which are listed in the indictment. Certainly, the Defendants are not prejudiced in any way by our having failed to put so many counts into the indictment. And the only difference between the present case and that case is that the indictment is fewer pages and lesser possible maximum penalty could be imposed on the event of conviction. In essence, then, the Defendant is really only complaining that we didn't put 1,879 counts in the indictment, whereas I am sure if we had done so he would have complained bitterly about the size of the indictment. There is no question that if the indictment had been that big, each of these letters could have been admissible separately and would have to be offered separately.

The Court: What do you have to say to that, Mr. Greenstein?

Mr. Greenstein: I have, first, this to say, your Honor, that when the government saw fit to draft or cause an indictment to be used, it had at its command the opportunity to make as many counts

as it saw fit. It saw fit to make, I think, five counts. In our opinion there can be only one reason for permitting this in evidence, or for the Prosecutor to have brought it in this way, and that is to impress the jury, and we submit improperly, with the size and ponderosity of those pouches, to make out of what might be nothing, something. The point is this, your Honor: These are all C.O.D. [76] packages. If all counsel was trying to do was bring out the fact that there were so many pieces, he had merely to subpoena the C.O.D. Department, because for each C.O.D. envelope there is an entry. He could have come in here with just a piece of paper or a summarization and said that "Our records show there were 1,874," to which we would have no objection. We maintain that bringing in six oversize pouches in this manner, which really adds nothing, is merely to inflame and prejudice the jury by the format and style of this attempted evidence.

The Court: I will reserve ruling on the offer and rule on it first thing in the morning.

Mr. Greenstein: May we respectfully request that these items be in the custody of the Clerk in the Clerk's office and not be brought physically into the Courtroom unless they are admitted?

The Court: If they are brought into the Courtroom, I hope that the wheels will be oiled. The case will be continued until 10:00 o'clock tomorrow morning. The Court will adjourn until that time.

(An adjournment was here taken for the day.) [77]

Honolulu, T. H.

December 2, 1958 at 10:00 A.M.

(Case called.)

The Court: Are you ready, gentlemen?

Mr. Langa: Ready for the Plaintiff, your Honor.

Mr. Greenstein: Mr. de Bruin was parking his car. I indicated to the Clerk he might be a minute or two late.

The Court: The record will show the jury is present and the Defendant Lemon.

Mr. Greenstein: Yes.

The Court: What time did he start parking his car, do you know?

Mr. Greenstein: No, I don't your Honor. He was in my office earlier. He was supposed to be here before 10:00.

May the record now show that Mr. de Bruin is in the Courtroom?

The Court: Yes, the record will show that it is two minutes after 10:00. The Court convened at 10:00 o'clock, and in accordance with the custom that has been established in this Courtroom for some time it will cost your client \$1.00 for each minute he was late. That will be taken care of later on. That goes for attorneys and jurors. In case you think I am showing partiality here, I am not.

At the close of the session yesterday the Court [78] took under advisement the offer in evidence of six pouches containing 1,874 letters which were seized by the United States Marshal. The objection is overruled and the pouches with the contents—I

assume they are as designated by the Marshal—will be received in evidence as Exhibit next in order—5, Mr. Clerk?

The Clerk: Exhibit 6, your Honor.

The Court: Exhibit No. 6. And I will instruct the jury at this time on the reason for admitting them, or the purpose for which they are admitted. These envelopes in the pouches are received in evidence because they are so blended or connected with the offenses on trial, and they incidentally involve the evidence which has been received, they also explain the circumstances, and in the Court's judgment tend logically to prove elements of the crime charged. I find that it is so related to or connected to the crimes charged as to establish a common scheme or purpose so associated that proof of one tends to prove the other; that they are connected with a single purpose and in pursuance of a single object. They are also received for the purpose of establishing identity, guilty knowledge, intent and motive. You may call your next witness, Mr. Langa.

Mr. Langa: Mr. Nozawa.

NANCY NOZAWA

called as a witness on behalf [79] of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Mrs. Nozawa, would you please tell us for the record your name and occupation?

(Testimony of Nancy Nozawa.)

A. My name is Nancy Nozawa and I am a supervisor, fiscal accounting clerk at the Naval Supply.

Q. Now, calling your attention to the period of the latter part of May, early part of June of this year, did you receive a telephone call from the Honolulu Customers Checkbook? A. Yes, I did.

Q. Do you know about when? Can you pin it down to a closer time than I have?

A. I received a call at about 9:30 on Saturday, June the 14th.

Q. Now, do you recall the substance of that telephone call? A. Yes, I do.

Q. Would you please tell us briefly, in your own words, the nature of the call?

A. Yes. I received a telephone call from a woman who identified herself as from the Customers Checkbook. And she told me it was a contest and that if I could answer the following question, I would receive some valuable merchandise. The question asked was: What is the second largest city on [80] Oahu, to which I answered Wahiawa. And she said, "Congratulations. You have—this is some of the merchandise you have won." Oh, she mentioned some tickets to the wrestling matches, boxing matches, a meal at Vincente's and some oil and grease job and minor brake adjustments, car wash for Ray's Shell Service. Then she concluded her conversation by saying, "You have won over \$60 worth of valuable merchandise for a cost of \$4.75,"

(Testimony of Nancy Nozawa.)

which was to cover postage and the cost of printing the checkbooks, to which I agreed.

Q. Now, Mrs. Nozawa, I am showing you an envelope bearing a postmark, Honolulu, Hawaii, bearing the return address, Honolulu Customers Checkbook, and your name as addressee. Do you recognize that?

A. Yes. And I have signed that. I did receive this, yes.

Q. Do you recall receiving that in the mail?

A. Yes, I did. I received this on June 17th.

Mr. Langa: Your Honor, I offer this envelope and its contents in evidence.

Mr. Greenstein: No objection, your Honor.

The Court: It will be received as exhibit number 7.

(The document referred to was received as Plaintiff's exhibit 7 in evidence.)

Mr. Langa: I have no further questions. [81]

Cross Examination

Q. (By Mr. Greenstein): Now, Mrs. Nozawa, are you sure that the party who called you said, in effect, that this was a contest?

A. Yes, I am quite sure.

Q. You are quite sure of that. And are you likewise quite sure that this party said you would receive merchandise of over \$60? A. Yes, \$60.

Q. You are quite sure about that. The party never used the words, the figure \$50 in value?

A. No.

(Testimony of Nancy Nozawa.)

Q. Now, you were told that you would have to pay for this coupon book, weren't you?

A. Yes, to the extent that it would cover the printing and postage.

Q. You were told you would have to pay how much? A. \$4.75.

Q. Plus C.O.D. charges, I believe?

A. \$4.75 was to cover the printing and postage.

Q. And you were charged \$4.75?

A. I paid \$4.90.

Q. Tell me, Mrs. Nozawa, who presented Plaintiff's number 7 to you, this envelope?

A. The United States Postal Delivery man.

Q. The mail man? [82] A. Yes.

Q. Right. And did he tell you he had something C.O.D.? A. Yes, he did.

Q. Did he tell you what the charge would be?

A. He told me in order to redeem it I would have to pay \$4.90.

Q. And, of course, you know you did not have to redeem it; you know that, don't you?

A. Yes.

Q. You could have told the mail man that you didn't want it? A. Yes.

Q. I am going to direct your attention to the time and occasion of this phone call you say you had and ask you if it didn't go something like this: Did the party first start off by—by the way, what is your phone number? A. 990372.

Q. Didn't the party first start off by asking you if this was telephone number 990372?

(Testimony of Nancy Nozawa.)

A. Well, to tell you the truth, I didn't take the call. When it first rang my daughter answered the phone and called me to the telephone. So I don't know what the woman said.

Q. I see. Now, wasn't the first thing that the woman said: "This is the Honolulu Customers Checkbook calling"? [83]

A. Yes, I think she identified herself.

Q. Didn't she say: "This is the Honolulu Customers Checkbook calling"? A. Yes.

Q. And didn't she say: "I have some wonderful news for you"?

A. No, I think she started right off and said this was a contest.

Q. This was a contest? A. Yes.

Q. So you would deny that she said, "I have some wonderful news for you"?

A. I am not denying it. I am saying I didn't hear it.

Q. Did she say, "If you can answer the following question correctly, you will have the opportunity to receive a Customers Checkbook worth over \$50"?

A. Would you state that question again?

Q. Did this party who called you then say in effect, "If you answer the following question correctly, you will have the opportunity to receive a Customers Checkbook worth over \$50"?

A. May I qualify that question to say—

Q. Would you please first answer my question. Then you may qualify the answer. [84]

A. No.

(Testimony of Nancy Nozawa.)

Q. She didn't say that. Did she say, "Are you ready for the question"?

A. No, I don't think so.

Q. Did she say, "What is the second largest city on the Island of Oahu"? A. Yes, she did.

Q. Then she said, "You will receive something," and she listed many items; right?

A. Well, she said some of the merchandise I would receive and she did list some.

Q. She mentioned pizza from Larry Vincente's?

A. No. She mentioned a meal from Vincente's, if I remember right.

Q. Do you know whether the—this envelope that you brought back—that you brought into Court—no—which you have identified as the envelope you received and paid the C.O.D. and money order charges on—— A. Yes.

Q. ——did it contain a coupon from Larry Vincente's? A. Yes, it did.

Q. Were you told you would receive some free dance lessons from Arthur Murray's?

A. I believe she did.

Q. And did the Honolulu Customers Checkbook that you [85] received include a coupon for free dance lessons at Arthur Murray's?

A. Yes, it did.

Q. Were you told you would get a free boat ride?

A. I don't think she mentioned the boat ride. I am not sure.

(Testimony of Nancy Nozawa.)

Q. Do you know whether your coupon book includes a free boat ride?

A. Yes, it did, with some additional investment on my part.

Q. Were you told that you would get free tickets to wrestling? A. Yes, she did.

Q. And did the book include some coupons for wrestling? A. I think it did.

Q. And were you told that you would get free T.V. service, a free T.V. service call?

A. I don't remember her mentioning that.

Q. Do you know whether this book includes a coupon for free T.V. services?

A. Well, I don't remember.

Q. I will show you one of the coupons in the Honolulu Customers Checkbook which is part of the exhibit we are referring to, and ask you if it includes a coupon for free T.V. service? [86]

A. Yes, it does.

Q. And you were told that for your car you would receive various services, also?

A. Yes.

Q. And did this coupon book include a card relative to the giving of services, free services?

A. Yes. That is the card you have in your hand.

Q. Yes. So, now, actually, isn't it true, Mrs. Nozawa, that with respect to every item that was mentioned to you, they are all covered by coupons in this book; isn't that true?

A. Yes. Your Honor, I would like to explain.

The Court: Yes, you may.

(Testimony of Nancy Nozawa.)

The Witness: Fully.

The Court: You may.

The Witness: Yes, it does cover — include the items mentioned, but, now, in her conversation she led me to believe that there were many others and she said—because she started by saying “Some of the things you have won are.”

Q. (By Mr. Greenstein): Yes. But as you are sitting here and testifying today under oath, Mrs. Nozawa, you cannot think of anything that she mentioned you would be entitled to that was not reflected in a coupon or card that you received, can you?

A. Well, she led me to believe——

Q. I beg your pardon? [87]

A. She led me to believe that there were many merchandise gifts that I had won.

Q. Well, can you mention just one item that is not reflected in a coupon?

A. That she didn't mention, you mean? I don't understand your question.

Q. Can you mention one item—— A. Yes.

Q. ——that the person on the telephone mentioned to you that you would receive that you did not receive in the form of a coupon?

A. Well, sir, I think I made myself clear when I said she had mentioned some items that I would receive but she didn't mention all of the items I was supposed to receive.

(Testimony of Nancy Nozawa.)

Q. Yes. And I am trying to develop that by taking the liberty of asking you can you inform this Court and jury as to just one item that she mentioned that is not contained in this Customers Checkbook?

A. Well, the items that I mentioned that she had mentioned are in the Checkbook.

Q. Precisely? A. Yes.

Q. Now, how many times did this telephone operator inform you that there would be a charge in connection with this Checkbook? [88]

A. Once.

Q. Well, now, didn't she mention it at least twice? A. I said once.

Q. You say once?

A. Yes. In the—in concluding her, you know, offer of free merchandise, she did mention that I would have to pay for the printing of the Checkbook and the postage, which was \$4.75.

Q. Did she inform you something to this effect, "The only cost to you is \$4.75 for printing and handling costs of your Customers Checkbook"?

A. Well, sir, it was a telephone call and I don't remember the exact words.

Q. Is it possible that she used that language?

A. But it was something, though, to the effect that it included postage and printing costs for \$4.75.

Q. And following that did the party on the telephone tell you that "In all, you do receive over \$50 in useful values"?

(Testimony of Nancy Nozawa.)

A. No, she said \$60 worth of valuable merchandise.

Q. Did she say to you, "Now, your Checkbook will be delivered to you next week," or something to that effect?

A. Well, by that time I was so happy and excited, I don't remember if she said that or not.

Q. I see. Did she say, "You understand, when your mail [89] man brings your Customers Checkbook you pay him only \$4.75"?

A. No, I don't think she said that.

Q. You don't think she said that. Did she say, "The business men want and respect your patronage and we wish you a good time, so take advantage of these wonderful offers in your Honolulu Customers Checkbook"?

A. No.

Q. She didn't say that? A. No.

Q. Did she say, "Thank you"?

A. I was excited. I don't remember whether she said "Good bye" or "Thank you."

Q. Probably she did say "Thank you" or "Good bye"?

A. I can't remember, because I was too excited.

Mr. Greenstein: No further questions.

The Court: Redirect?

Mr. Langa: No redirect examination.

The Court: You may step down, Mrs. Nozawa.

Mr. Langa: Mr. Holloway.

CLAYTON C. HOLLOWAY

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you please state for the record your name [90] and address?

A. Clayton Charles Holloway, 41 Dune Circle, Kailua.

Q. Now, Mr. Holloway, if I may call your attention to the early part of summer, May or June, do you recall receiving a telephone call from the Honolulu Customers Checkbook? A. I do.

Q. Do you know approximately when that was?

A. Approximately—I can't remember that.

The Court: Keep your voice up, Mr. Holloway, so we can all hear you.

The Witness: I can't remember the approximate date.

Q. (By Mr. Langa): It was about in the end of May or early June?

A. Before the summer started.

Q. Do you recall the substance of that telephone call?

A. Vaguely, I do. I remember that a woman was on the phone and she asked me my telephone number—I mean stated the number, and I said it was the correct number. And then she said that "If you answer—" — she said she was from the Honolulu Customers Checkbook, and she said, "If you answer some questions, the following question correctly, you will win over \$50 free gifts, merchandise." So then

(Testimony of Clayton C. Holloway.)

she asked me the question and the question was: Which is the second largest city on the Island of Oahu. And I said, [91] "Pearl City." And she said, "That is wrong," but she would give me another chance. So then she asked me in which hand did the Statue of Liberty hold the torch. And I said the left, and I was correct with that answer. And then she said that I had won over \$50 free merchandise and that she did state a few of the items that I was to receive in the book that would be mailed out through the mail, and it would be \$4.75 plus a small C.O.D. charge.

Q. Did you receive, then, something in the mail?

A. I received a slip of paper directing me to the postoffice here, and I went to the postoffice and paid the money and then received the book in return.

Q. I am showing you a Honolulu Customers Checkbook and a card, printed in red. Can you identify that?

A. Yes, I can. This is the merchandise for book that I received in the mail.

Mr. Langa: I see. Your Honor, I offer this in evidence.

Mr. Greenstein: No objection.

The Court: It will be received as exhibit number 8.

(The document referred to was received as Plaintiff's exhibit number 8 in evidence.)

Q. (By Mr. Langa): Mr. Holloway, on exhibit number 8, which is the Honolulu Customers Checkbook which you have just testified to, there is a sig-

(Testimony of Clayton C. Holloway.)

nature there that purports to be [92] your signature. Is it?

A. Yes, this is my signature.

Q. Which one is your signature?

A. The one on the card.

Q. The one on the card. And also the one on the book? Both of them? No. There is also a date there. Was that the date that you put your signature on the book?

A. I don't remember the exact date that I signed for the book.

Q. Do you recall how much you paid for the letter when you got it from the postoffice?

A. \$4.90.

Mr. Langa: I have no further questions.

Cross Examination

Q. (By Mr. Greenstein): Well, after you had concluded this phone conversation with this party from the Honolulu Customers Checkbook you expected to pay \$4.90, didn't you?

A. Well, the girl said at the end of the conversation that in order to receive the book there will be \$4.75 charge for the handling and printing of the book and a slight C.O.D. fee.

Q. Yes. And so you were apprised you would be charged the sum of \$4.90 for the book? [93]

A. Would you repeat that again?

Q. I will withdraw it and state it another way, sir. When the phone conversation was concluded, you expected to pay \$4.75 plus a little handling

(Testimony of Clayton C. Holloway.)

charge for the coupon book you were to receive, didn't you? A. I did.

Q. Yes. And did the coupon book include all the things you were told by phone you would receive?

A. I wasn't told over the phone of all the items in the book, only a very few of them.

Q. So, as a matter of fact, you received coupons covering more than the items you were informed about?

A. She said, the woman on the telephone said that she just stated a few of the items which were in the book, but she said there were many more besides that.

Q. Yes. And that was true, was it not?

A. That is correct.

Q. And she didn't question any items that were not covered by a coupon?

A. I don't remember.

Mr. Greenstein: No further questions.

The Court: Redirect?

Mr. Langa: No redirect examination.

The Court: You are excused, Mr. Holloway.

LIESELOTTE K. KAHOOKELE

called as [94] a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Would you please tell the jury your name and address?

(Testimony of Lieselotte K. Kahookele.)

A. My name is Lieselotte K. Kahookele, and we live in Schofield Barracks.

The Court: Spell the first name for the reporter.

The Witness: L-i-e-s-e-l-o-t-t-e K-a-h-o-o-k-e-l-e.

Q. (By Mr. Langa): Now, Mrs. Kahookele, I would like to call your attention to early June of this year or late May; do you recall receiving a telephone call from the Honolulu Customers Checkbook?

A. Yes, I did.

Q. Do you remember what was said in the telephone call?

A. That I had received free gifts from the Honolulu Customers Service.

Q. Do you recall anything about a contest or anything of that—

A. No.

Q. All you recall now, then, is that you were to receive some free gifts?

A. If I answered a question. [95]

Q. Oh, I see. And then did they ask you a question?

A. Yes.

Q. And what happened then?

A. She asked me the question, in which hand the Statue of Liberty holds the torch. And my answer was the left, which, after the conversation, I know it was wrong, but before it wasn't wrong.

Q. Well, what did they tell you on the telephone?

A. It must have been correct, the woman told me all about the free gifts.

Q. I see. Then subsequently did you receive any mail from the Honolulu Customers Checkbook?

(Testimony of Lieselotte K. Kahookele.)

A. Yes, I did, C.O.D.

Q. I am showing you a Honolulu Customers Checkbook and a Ray's Shell Service card. Have you seen those before? A. Yes, sir.

The Court: What is the answer?

The Witness: Yes.

Q. (By Mr. Langa): Is that the mail you received C.O.D.? A. Yes.

Mr. Langa: Your Honor, I offer this checkbook and card in evidence.

Mr. Greenstein: No objection.

The Court: They will be received as exhibit number 9. [96]

(The documents referred to were received as Plaintiff's exhibit number 9 in evidence.)

Mr. Langa: No further questions.

Cross Examination

Q. (By Mr. Greenstein): Mrs. Kahookele, the party that talked to you on the telephone from the Honolulu Customers Checkbook, did they say to you, "If you can answer the following question correctly, you will have the opportunity to receive a Customers Checkbook worth over \$50 in useful car services, entertainment tickets and free gifts?"

A. Yes.

Q. And wasn't that the form in which the question was asked of you when they opened up the conversation? A. Yes, it was.

Q. And then after they asked you the question about the Statue of Liberty, they told you you

(Testimony of Lieselotte K. Kahookele.)

would receive the following items, and mentioned the list of items; isn't that true? A. Yes.

Q. And they also told you that there would be a charge of \$4.75 for the coupons you would receive?

A. It was after they told me all the free gifts I was supposed to get free.

Q. Yes. [97]

A. I didn't have to buy anything with them.

Q. But my question is: After they gave you this list, *you* told you the coupon book would cost \$4.75, did they not? A. Yes, that is correct.

Q. And the coupon book reflected the things they were talking about that you would be entitled to, did it not? A. Yes.

Mr. Greenstein: No further questions.

The Court: Redirect?

Mr. Langa: No redirect.

The Court: You are excused.

ROBERT ENOMOTO

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Will you state for the record your full name and residence?

A. My name is Robert Enomoto, and I live at 45-521 Duncan Drive, Kaneohe.

Q. Now, Mr. Enomoto, calling your attention to the early part of June of this year, do you recall

(Testimony of Robert Enomoto.)

receiving a telephone call from the Honolulu Customers Checkbook? A. I did. [98]

Q. Do you recall the substance of that call?

A. Well, I was led to believe that——

The Court: Mr. Enomoto, the question is: Do you remember the substance of the call?

A. Oh, yes. Some parts.

Q. (By Mr. Langa): Some parts. Could you tell us those parts which you do remember?

A. Well, I remember answering the phone and this woman saying that she was from the Honolulu Customers Checkbook and she wanted me to answer a question, and if I did answer it correctly, I would receive merchandise worth over \$60.

Q. Then did she ask you the question?

A. Yes, she did.

Q. What happened then?

A. Well, she asked me the question. She asked me what was the second largest city in Honolulu. So I said "Wahiawa." And she said I was right. And she congratulated me and said that I would receive the checkbook through the mail, and I will have to pay a small fee on the book.

Q. Then subsequently did you receive some mail from the Honolulu Customers Checkbook?

A. Yes, I did.

Q. I show you a letter with your name on the front; is that the mail you received? [99]

A. Yes, I guess that is the one.

Q. Would you look inside and tell me if the con-

(Testimony of Robert Enomoto.)

tents of that letter are the same contents that were in it when you received it?

A. Yes, that is the one.

The Court: What is the answer?

The Witness: Yes.

Q. (By Mr. Langa): Excuse me. I take it except for this official card which came——

A. Yes. This didn't come with it.

Mr. Langa: Your Honor, I offer the envelope and its contents, except for that other card, which is only a notice of C.O.D. mail.

Mr. Greenstein: No. I suggest that it be part of the exhibit.

The Court: Very well. The envelope and its contents will be received as exhibit number 10.

(The documents referred to were received as Plaintiff's exhibit number 10 in evidence.)

Mr. Langa: However, I believe his testimony is that that one card was not in the envelope when he received it.

The Court: But it was a notice to appear to pick up the C.O.D.; is that correct?

Mr. Langa: That is right. It is the card the [100] postoffice uses to notify you of your mail. That is exhibit 9, your Honor?

The Court: Exhibit 10.

Q. (By Mr. Langa): Now, Mr. Enomoto, in exhibit 10, which is the letter you have just identified, there is a card printed in blue ink that says Date's Service Station? A. Yes.

Q. That was in the letter?

(Testimony of Robert Enomoto.)

A. Yes, sir, it came with the letter.

Q. Do you know who Mr. Date is?

A. Yes, I do.

Q. And you know where his service station is?

A. It is in Kailua.

Q. That is Mr. Thomas K. Date, is it not?

A. That is right.

Mr. Langa: If the Court please, there is an exhibit marked for identification, Plaintiff's exhibit number 3, as to which, I believe, now sufficient foundation has been laid, and I would like to re-offer it in evidence, the contract which Mr. Date brought to Court, proposed contract.

The Court: Is there any objection?

Mr. Greenstein: Yes, there is. We incorporate the objections heretofore made, and we also say it goes beyond the allegations of the indictment.

The Court: Objection on the ground and insufficient [101] foundation has been laid will be sustained.

Mr. Langa: I have no further questions from this witness.

The Court: Cross examine?

Cross Examination

Q. (By Mr. Greenstein): How much did you pay for your Honolulu Customers Checkbook?

A. \$4.75.

Q. And you were told, you expected to pay that amount when you were through with this phone conversation?

A. I did.

Mr. Greenstein: No further questions.

Mr. Langa: No redirect.

The Court: You are excused, Mr. Enomoto.

Mr. Langa: Mr. Jacobson.

ELMER L. JACOBSON

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Langa): Will you state your name and occupation, please?

A. My name is Elmer L. Jacobson, Postal Inspector with headquarters at Honolulu.

Q. Now, Mr. Jacobson, in the course of your official [102] duties have you conducted an investigation of the instant case? A. Yes, I have.

Q. In the course of your investigation have you examined a number of letters for the purpose of making an analysis of the letters? A. Yes.

Q. What was the purpose of the analysis?

A. The purpose of the analysis was to determine the contents of the various mailings made in the name of Honolulu Customers Checkbook to compare that with the Honolulu postoffice record.

Q. And specifically what mail did you examine?

A. I examined a representative number of Customers Checkbooks and envelope turned in to me by complainants, compared them with the Honolulu postoffice record.

Q. Now, from your examination of those letters did you determine that they were all alike?

(Testimony of Elmer L. Jacobson.)

A. No, they varied as to contents at different dates of mailing.

Q. I see. Could you state just briefly the nature of the variations?

Mr. Greenstein: I am going to object to that line as being immaterial to the issues.

The Court: Which ones? [103]

Mr. Greenstein: We have five counts here. We have the complainants' testimony.

The Court: What is the purpose of this, Mr. Langa?

Mr. Langa: The purpose, your Honor, is just to give a picture of the plan, of the type of mailing that was involved in the overall promotion. It will appear that not each of the checkbooks in evidence is like each of the others, and this is to explain the differences.

The Court: The objection is overruled.

Q. (By Mr. Langa): Would you proceed?

A. Yes. There were six different types of mailings, as far as I could determine. The first type of mailing began——

Mr. Greenstein: Just a minute. Your Honor, may I be permitted to conduct a Voir Dire examination to see whether or not this inspection was according to due process of law and by what authority?

Mr. Langa: I think that has already been shown, your Honor. He inspected letters that had been brought to him by complainants who had received the letters in the mail.

(Testimony of Elmer L. Jacobson.)

The Court: Those are the letters you are talking about?

The Witness: That is right.

The Court: Yes. Your request for Voir Dire examination at this time is denied.

The Witness: Beginning June 2nd the C.O.D. charges [104] were \$3.95 plus a 15 cent money order fee, and the contents of those mailings consisted only of George's Shell Service card. Beginning on June 5th the C.O.D. charges were still \$3.95, but the 15 cents money order fee and contents consisted of George's Shell Card plus a Customers coupon book. Beginning on June 7th the charges were \$3.95 plus 15 cents money order fee. The contents consisted of a Ray's Shell Service card plus a coupon book. Beginning on June 10th the mailings were—consisted of a coupon book plus Ray's Shell Service card, and the price was raised, then, to \$4.75 plus 15 cent money order fee. The coupons were identical to the prior ones mailed with Ray's Service, but, except, that there was only one Al Karasick coupon for a general admission ticket, whereas the prior mailings had two. The next mailings began on June 14th, and consisted of Ray's Shell Service card and coupon book, but added to the coupon book were six coupons from the CHA 3 Bowl and one coupon from the Stauffer System. Beginning on June 17th, when there were 193 articles mailed, according to the postoffice records, the contents consisted of Date's card plus a coupon book, with C.O.D. charge of \$4.75 plus 15 cents money order fee.

(Testimony of Elmer L. Jacobson.)

Q. (By Mr. Lange): Now, I take it by inference from what you have said that you examined the postoffice C.O.D. records in addition to the letters themselves?

A. Yes. Those records consisted of pages from the [105] firm, what we call a firm mailing book. Those pages were completed by the mailer or representative of the mailer, turned in with the articles to the Honolulu postoffice, and then receipted for by a postal employee.

Q. Do you have those records with you?

A. I do.

Mr. Langa: If your Honor please, may I——

Mr. Greenstein: We object as far as the materiality is concerned, your Honor. We submit that these records do not——

The Court: They have not been offered.

Mr. Greenstein: I am sorry. I am not going to look at them. I have seen them.

Mr. Langa: These records show a mailing——

Mr. Greenstein: The records will speak for themselves. I object to the characterization without them in evidence.

The Court: Just a minute. Yes. The question has not been asked, for one thing. And I prefer to allow counsel to ask the question before interposing an objection.

Mr. Greenstein: My objection was that counsel is making a speech instead of making an offer.

The Court: Just a minute. You make your objection in proper form at the proper time.

(Testimony of Elmer L. Jacobson.)

Q. (By Mr. Lange): Mr. Jacobson, do these records [106] show the addresses of the letters?

A. They do.

Mr. Greenstein: I had an objection, but he answered. I will wait.

Q. (By Mr. Langa): I believe you have already explained that these are brought by the mailer to the sender with the mail that is sent; is that correct? A. That is the normal procedure, yes.

Mr. Langa: Your Honor, I want to offer these. Your Honor, I do offer these records to show the mailing of a letter to Margaret Sorrell.

The Court: Covered in count 4 of the indictment?

Mr. Langa: The count, I believe, is 4.

The Court: It is 4. Is that the only purpose you are offering it?

Mr. Langa: That is the only purpose that I want them for.

The Court: Does the record show such a mailing?

Mr. Langa: The record does not yet show such a mailing. Margaret Sorrell is not available as a witness.

The Court: No. The question is does the record before you show a mailing to Margaret Sorrell, 2721 Papiolani Blvd. on or about June 16, 1958?

Mr. Langa: Money order number 5145.

The Court: Money order? [107]

Mr. Langa: Well, it is C.O.D. number.

The Court: Where is Margaret Sorrell?

(Testimony of Elmer L. Jacobson.)

Mr. Langa: She is on the mainland at the present time. I am not sure just where. Perhaps Mr. Jacobson knows.

The Witness: I don't know the exact point.

The Court: Have you examined that record?

Mr. Greenstein: Yes, I have, your Honor.

The Court: What do you have to say as to the offer?

Mr. Greenstein: I say there is not sufficient foundation for tying it into count 4. The fact that the letter may have been mailed doesn't tie it up to the gravamen of the offense, which would be the purported prior dealings between the Defendants and the party named in the count.

Mr. Langa: I think counsel misconstrues the indictment, your Honor.

The Court: Well, I will handle it this way. Show the record to Mr. Jacobson and he may read that portion into the record, or read what it says.

The Witness: On postoffice form 3877-A postmarked June 16, 1958, which is a record I obtained from the Honolulu postoffice, I find on line 8 the handwritten entries of a number of articles, 5145, name of addressee, street and postoffice address, Margaret Sorrell, '2721 Kapiolani Blvd. And another handwriting entry A. Hare, H-a-r-e, in the right [108] hand column.

The Court: Is that an official record of the post-office department?

The Witness: It is, your Honor, official original record.

(Testimony of Elmer L. Jacobson.)

The Court: You obtained that from the files from the Postmaster?

The Witness: That is correct.

The Court: I think it is time for our morning recess. Ladies and gentlemen of the jury, you will be excused for a ten minute recess. Is Mr. Jacobson your last witness?

Mr. Langa: He is, your Honor.

The Court: As far as you know. Well, the Court will take a ten minute recess.

(Recess.)

The Court: The record will show the jury is present, the Defendants and their counsel. Have you concluded your direct examination?

Mr. Langa: I have just a few more questions, your Honor.

The Court: Very well.

Q. (By Mr. Langa): Now, Mr. Jacobson, I am not sure whether we covered this or not, but to make it clear, the official records which you have testified from are records of mailings by whom? [109]

A. The Honolulu Customers Checkbook, I believe that is the name that appears on each page, or appearing on each page.

Q. Is it possible from an inspection of the official records to determine or to find out how many items all together have been mailed by the Honolulu Customers Checkbook?

A. Yes. It was and it is possible.

Q. Did you so inspect the records to find that out?
A. I did.

(Testimony of Elmer L. Jacobson.)

Q. How many?

A. They run serially here beginning with number 1 on June 2nd and up to 5,589 on June 17th. But I find there is some duplication of numbers, apparently inadvertent, some skipping, my personal count is 4,208 pieces mailed.

Q. When you say "Personal count," that means that there may be a plus or minus by a few?

A. I could have made a mistake, more or less, yes.

Q. Now, Mr. Jacobson, were you at the preliminary hearing before Commissioner White in this case?

A. Yes, I was.

Q. And at that preliminary hearing did you hear either of the Defendants testify?

Mr. Greenstein: I am going to object to that line as being highly improper. If he is going to refer to any testimony, if there was a transcript, that would be the best [110] evidence.

The Court: The objection is overruled.

The Witness: Yes, I recall the testimony of Defendant Lemon.

Q. (By Mr. Langa): Of Lemon?

A. Yes.

Q. Do you recall whether or not he testified regarding the ownership and management of Honolulu Customers Checkbook?

Mr. Greenstein: We will stipulate to that.

The Court: That the Defendants were the owners and operators of the Honolulu Customers Checkbook.

(Testimony of Elmer L. Jacobson.)

Mr. Greenstein: That we have never denied.

The Court: That is in the record, ladies and gentlemen of the jury. When counsel stipulate to a fact, that is taken as conclusively proved and you are bound to accept it as a fact.

Mr. Langa: I have no further questions.

The Court: Cross examine?

Cross Examination

Q. (By Mr. Greenstein): When a piece of mail, an article of mail, sir, is presented for C.O.D. processing, whose property do you consider it?

A. Any piece of mail matter, as I understand it, remains the property of the sender until it is correctly [111] delivered to the addressee.

Q. You have testified that according to your record 4,280 pieces were submitted for C.O.D. handling by the Honolulu Customers Checkbook?

A. 4,208.

Q. Oh. I may have misunderstood. Now, before you take those pieces does Uncle Sam collect a C.O.D. fee or charge?

A. Yes, that is right.

Q. And what is that charge?

A. It depends on the size of the C.O.D. charge to be collected. The fee is 30 cents in all these instances here that I know of.

Q. 30 cents? A. C.O.D. fee, yes.

Q. Isn't it 36 cents? A. 30 cents.

Q. 30 cents?

(Testimony of Elmer L. Jacobson.)

A. That is right. I might explain to counsel that the postage is in addition, six cents.

Q. In connection with all these items that are represented by this exhibit, being exhibit number 6, the Honolulu Customers Checkbook has paid 36 cents, 30 cents being the C.O.D. charge, and, I think, six cents postage.

A. I believe some had only 33 cents on, but the lawful [112] postage on all of them.

Q. And in connection with the C.O.D. envelopes, referring to, for example, Plaintiff's exhibit number 10, where it says "Due the sender," \$4.75 would be transmitted to the Honolulu Customers Checkbook, I take it? A. That is correct.

Q. And the 15 cent money order, who got that?

A. That covered the fee on the money order which transmits the \$4.75.

Q. In other words, that, likewise, would go to the Postal Department?

A. The Treasury Department.

Q. The Treasury Department. Now, when was it, sir, that you commenced opening up the mail that belonged to Honolulu Customers Checkbook?

A. I have never opened up a single item. I have never opened a single envelope of mail belonging to the Honolulu Customers Checkbook or anyone else.

Q. You have not. Do I understand you have not opened up any of these envelopes that are in evidence? A. That is correct.

Q. You have not opened them up. When you were talking about making inspections at various

(Testimony of Elmer L. Jacobson.)

dates in June, what kind of inspections were you making?

A. I examined the material that was turned in to me [113] by complainants.

Q. I see. They had already been opened?

A. I examined the material turned in to me by the complainants, the persons who contacted my office.

Q. When you were talking about June 17th or June 10th and June 14th examination, you were referring to examination of envelopes that were brought in to you by customers?

A. That is correct.

Q. Is that right? Now, when did you start—withdraw and reframe. These 1,800 or so pieces of mail that are in evidence as part of exhibit 6, over how long a period were they accumulated by the Postal Department?

A. I believe some accumulated since the first date of mailing, June 2nd.

Q. Didn't the Postal Department carry the mail?

A. It did. We can't force them on an addressee. If they refuse them, we hold them a prescribed length of time.

Q. That is what I am trying to find out. I am trying to characterize just what Plaintiff's exhibit 6 represents. Do they represent mailings which went out and were refused, brought back to the Postoffice Department?

A. Some of these do, yes. They would represent

(Testimony of Elmer L. Jacobson.)

several types, some that were mailed on the 17th which yet were not delivered, some mailed from June 2nd on which they were refused, some, perhaps, where the addressee had moved; [114] in other words, those that we weren't able to deliver.

Q. Now, as I understand it, the seizure of these was made by you June 17th?

A. No, I didn't seize them. The Marshal seized them.

Q. The Marshal? A. That's right.

Q. They were seized on what date; was it June 17th, do you know?

A. I don't know the date. I filed application for a search warrant on the 17th. It was a bit later that the Marshal seized them.

Q. Was June 17th the last date of any mailing, if you know?

A. As far as the records show, the 17th was the last.

Q. What do your records show as to the number of pieces that were submitted for processing on the 17th?

A. 193 pieces were listed on form 3877 bearing Honolulu postmark of June 17th.

Q. And will you refresh my recollection and tell us again how many pieces of mail are in exhibit six?

A. I don't know exactly of my own knowledge.

The Court: 1,874.

The Witness: The Marshal testified.

The Court: The Marshal testified 1,874.

Mr. Greenstein: Thank you. [115]

(Testimony of Elmer L. Jacobson.)

Q. Would it be fair, then, to say, Mr. Jacobson, that approximately over 1,600 of these articles represent returns or improper deliveries, improper addressees?

A. I am sorry, I didn't hear the question.

Q. Let's put it this way. We have established that the June 17th mailings did not go out?

A. That is right, as far as I know.

Q. Was that the only date that was held up?

A. As far as I know, yes.

Q. So that of the 1,874, 1,681 would be articles which were either refused or misaddressed?

A. Right. I should correct my testimony. Some of the 17th were delivered, did go out.

Q. Well, then, that would make the number even more; in other words, about 80 or 90% of the articles mailed that are in this Plaintiff's exhibit 6 were either returned or improperly addressed; would that be fair?

A. Returned, improperly addressed, refused.

Q. Or refused? A. Yes.

Mr. Greenstein: I have no further questions.

Mr. Langa: I have no redirect examination.

The Court: You may step down, Mr. Jacobson.

Mr. Langa: If the Court please, before I rest, it occurred to me that the bags are locked. I have a key [116] which the Court may want to use if the jury wants to get in to them. Could I leave that with the Clerk? It is not evidence, but it is a tool.

The Court: The key will be kept in the custody of the Clerk subject to the orders of the Court.

Mr. Greenstein: In that connection we could probably stipulate as to the contents, without waiving our objections to the introduction of the evidence, as far as having come out of the bags.

The Court: Have you ever seen the inside of the pouches? I think you might take a look. Supposing you open them, Mr. Clerk, and we will see, and the jury can see what is inside of them.

(The Clerk opens mail pouch.)

The Court: Does that pouch indicate that it contains similar packs of envelopes such as you have in your hand?

Mr. Langa: There is a slip of paper that says P-S-O. This one has P-S-S.

Mr. Greenstein: They are just alphabetical designations of the first letter of the last name.

The Court: Are you satisfied from your inspection of that one pouch, Mr. Greenstein, that all of the pouches contain similar envelopes and contents?

Mr. Greenstein: Yes, I am, your Honor. [117]

The Court: And you will stipulate, then, that there are in the pouches 1,874 envelopes and contents, and the contents are the checkbooks and the cards?

Mr. Greenstein: It may be so stipulated.

The Court: Very well. Is that agreeable to you, Mr. Langa?

Mr. Langa: Well, to tell you the truth, I am somewhat skeptical about the Marshal's testimony on the number of letters. I am not an expert on judging the letters in mailbags, but I don't anticipate the jury would want to count them.

The Court: The testimony is not contradicted, and it is up to the jury to weigh the Marshal's testimony and not for you or for me. We will leave it that way, ladies and gentlemen of the jury, but if, during your deliberations, you desire to inspect more carefully the contents of the bags, they will be made available to you.

Mr. Langa: Your Honor, I have no further questions and no further evidence to put on.

Mr. Greenstein: The government rests?

The Court: Do you wish to make an opening statement at this time?

Mr. Greenstein: I wish to make a motion.

The Court: Very well. You may make your motion.

Mr. Greenstein: I wish to make a motion for [118] judgment of acquittal, and respectfully ask to argue it at this time.

The Court: State the grounds of your motion.

Mr. Greenstein: Yes, that the government has failed to establish by the preponderance required the necessary elements of offenses charged.

The Court: Those are the grounds?

Mr. Greenstein: Yes.

The Court: I do not desire to have argument on the motion. I have watched the taking of evidence in the light of the allegations contained in the indictment, and I will reserve ruling on your motion.

Mr. Greenstein: Thank you. May we have just one moment, your Honor.

The Court: Yes.

Mr. Greenstein: Mr. Youn, please.

ANTONE YOUN

called as a witness on behalf of the Defendants,
being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Greenstein): Will you please state your name, address and occupation?

A. Antone Youn, 359-D Olohana, owner of Tony's T.V. and Radio Service. [119]

Q. Mr. Youn, do you know the Defendants or any of them?

A. Yes, sir. I met them over at Larry Vincente's Restaurant.

Q. Have you had any business dealings with the Defendants? A. Yes, I did.

Q. Would you tell the Court and jury what the nature of your business dealings were with them?

A. Well, I happened to go to lunch over at Larry Vincente's and they were there. And they approached me about the Customers Checkbook. And I felt that I needed a little more promotion in my business, so I accepted.

Q. Did you sign an agreement with them?

A. Yes, sir, I did.

Q. And is this the agreement that you signed?

A. Yes, sir.

Mr. Greenstein: We offer this agreement in evidence.

Mr. Langa: No objection.

The Court: It will be received as exhibit K.

(The document referred to was received in evidence as Defendant's exhibit K.)

(Testimony of Antone Youn.)

Q. (By Mr. Greenstein): Now, what was the purpose that you had in entering into this arrangement with the [120] Honolulu Customers Check-book?

A. To promote more business in my T.V. company. That is the only interest I had.

Q. You thought it was a pretty good idea.

A. I still feel it is a pretty good idea.

Q. And by this agreement, you agreed to honor 5,000 coupons? A. Right, yes, sir.

Q. Were you interested in the manner in which the Defendants would distribute your coupons?

A. Well, I was in a hurry and I didn't ask them how they were going to sell the books. They told me they were going to sell the books. That is all I was interested in.

Q. You didn't care how they would sell them?

A. No, I didn't ask them how they were going to sell them.

Q. You say that you were happy with the arrangement with the Defendants?

A. At the time, yes.

Mr. Greenstein: Your witness.

Cross Examination

Q. (By Mr. Langa): Mr. Youn, where did you say your shop is?

A. 207 South Beretania Street.

Q. South Beretania. You make service calls over the [121] entire Honolulu area?

A. No, I don't.

(Testimony of Antone Youn.)

Q. How far do you go from your shop on a service call?

A. I will say as far as Aiea and as far as Sandy Beach.

Q. Your agreement here has written in ballpoint pen "Free, one T.V. service call." Is that what you expected to be presented with coupons to redeem for; you expected to be presented with coupons that would be redeemed for one free T.V. service call?

A. That is right.

Q. Would you redeem those coupons for anybody living in Kailua?

A. Well, the opportunity never arose. I didn't get any calls from the country so I cannot make a comment on that.

Q. What was your intention at the time you entered into this contract?

A. To promote business.

Q. Yes. But what was your intention as to the meaning of that free T.V. service call coupon; did you mean anywhere on the Island?

A. I forget whether they told me about all around the Island. I took it for granted it was just in the vicinity of Honolulu. [122]

Q. Did you get any telephone calls from Kaneohe in regard to this coupon book?

A. I don't recall. But if I had a call from Kaneohe, the service charge out there is about \$10, so I would have to explain to the customer that it would be an additional \$5 to go there.

Q. In addition to the coupon?

(Testimony of Antone Youn.)

A. So I don't think they would call me. They would rather call someone in Kaneohe.

Mr. Langa: No further questions.

Mr. Greenstein: No redirect.

The Court: You may step down, Mr. Youn.

LARRY VINCENTE

called as a witness on behalf of the Defendants,
being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Greenstein): Please state your name, address and occupation?

A. I am Larry Vincente, Producer and Booking Agent. My address is 109 University Avenue.

Q. What was your business or occupation in May 1958?

A. I was general manager and president, Larry Vincente's Restaurant.

Q. Where was that located?

A. 1900 Kalagaua Avenue. [123]

Q. Do you know the Defendants in this case?

A. Yes.

Q. Did you have any business dealings with them in connection with a Honolulu Customers Checkbook? A. No, just that.

Q. I mean you have had dealings with them in connection with the Customers Checkbook?

A. Yes.

Q. May I show you a document entitled "Agree-

(Testimony of Larry Vincente.)

ment" and ask you if this is the agreement you entered into with the Defendants? A. Yes.

Mr. Greenstein: I believe there is no objection.

Mr. Langa: No objection.

The Court: The agreement will be received as exhibit L.

(The document referred to was received in evidence as Defendants' exhibit L.)

Q. (By Mr. Greenstein): By this agreement you indicated your company was agreeable to honoring 10,000 coupons for free pizza, I believe?

A. Yes.

Q. And you were ready to honor that at all times, were you not? A. Yes. [124]

Mr. Greenstein: Your witness.

Cross Examination

Q. (By Mr. Langa): Now, to be more specific, Mr. Vincente, on exhibit L your agreement to honor coupons for one free pizza was limited to one per table, was it? A. Yes.

Q. And also it was not good Saturdays, Sundays and Holidays? A. Yes.

Q. Was it good for take-out orders?

A. No. If they had their—if some people didn't know they were not supposed to take it out, I just let them take it out, just to educate them to eat more pizza.

Mr. Langa: I have no further questions.

Mr. Greenstein: I have no redirect examination, your Honor.

The Court: You are excused, Mr. Vincente.

LYLE G. SPRINKLE

called as a witness on behalf of the Defendants,
being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Greenstein): Will you please state your name, address and occupation? [125]

A. Lyle G. Sprinkle, Senior, and I am in the bowling business.

Q. Where is your place of business?

A. Well, I have more than one. My main place of business is CHA 3 Bowl.

Q. Do you know the Defendants in this case, Jack Lemon and Marty de Bruin?

A. I have met Jack Lemon. The other gentleman I never knew until I came to Court, that I remember.

Q. Have you ever had any business dealings with Honolulu Customers Checkbook?

A. I did.

Q. What was the extent of your dealings with them, sir?

A. Well, Mr. Conley, a fellow that I had business dealings with before, brought this Customers Checkbook, a sample of it out to my place of business one night, and asked me if I would be interested in placing some coupons in it.

Q. Well, did you enter into an agreement with Honolulu Customers Checkbook? A. I did.

Q. What was that agreement?

A. That I would honor 60,000 coupons for one free game of bowling with no strings attached.

(Testimony of Lyle G. Sprinkle.)

Q. And were you happy to have made that arrangement, [126] sir?

A. Yes, I was happy to make that arrangement.

Q. And were you agreeable to honoring all coupons presented to you?

A. I not only was, I still am.

Q. Were you interested or concerned with the method of distribution that the Honolulu Customers Checkbook would employ in getting the coupons out?

A. To my knowledge, I didn't inquire. I figured that was their end of the promotion. I was merely to take up the coupons and honor them.

Q. Is it fair to say you didn't care——

A. I didn't care.

Q. ——what medium they employed?

A. No. As far as I am concerned, they just told me they were going to sell them. I didn't know how they were going to sell them. I didn't care.

Mr. Greenstein: Thank you. Your witness.

Cross Examination

Q. (By Mr. Langa): Did you enter into a written contract? A. I did.

Q. Do you still have it?

A. I do not. I imagine they have a copy of it.

Mr. Greenstein: May we have the Court's indulgence? [127] You can't produce it?

Q. (By Mr. Langa): Do you recall the date of the contract?

A. No, I don't recall the date of it. I do know

(Testimony of Lyle G. Sprinkle.)

that it was only three days after I signed the contract that they started printing these books.

Q. With your coupons in it?

A. My coupons in it.

Q. In other words, three days after you signed the contract your coupons first appeared in the book?

A. No. Mr. Conley told me three days later that they had started to print the book. I was anxious to get them out, and that is what I understood.

Q. You mean to say all books that were ever printed had your coupons in them?

A. Well, that I don't know. I know there is supposed to be 10,000 books with six coupons in a book.

Q. You are referring to books that you have your coupons in? A. That is right.

Q. I see. Well, was it in June that you entered into the contract?

A. Frankly, I don't know.

Q. Well, let's see. The coupons that were in the books, did you see any of the coupons? [128]

A. Yes.

Q. Were they in accord with your contract?

A. Yes.

Q. Then did your contract provide that the coupons would be limited to only one ticket per person per day? A. One ticket per person per day.

Q. Then it is not really true what you said in your direct testimony that there were no strings attached?

(Testimony of Lyle G. Sprinkle.)

A. I said I offered 60,000 free games with no strings attached.

Q. Except that they could use only one coupon per day?

A. That is what it says on the coupon. I don't think that is any string.

Q. Just so long as we understand it. Do you know offhand, Mr. Sprinkle, how many of these coupons you have redeemed?

A. I haven't redeemed a single solitary coupon, for the simple reason that people called me up on the phone to see if I will honor the coupons. I said I would be only too glad.

Mr. Langa: But they never have come out there. Thank you. That is all.

Mr. Greenstein: No redirect.

The Court: You are excused, Mr. Sprinkle. [129]

ALFRED STACY

called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Greenstein): Will you please state your name, address and occupation?

A. Alfred Stacy, 1024 Green Street, occupation salesman.

Q. Have you ever been engaged either as owner or employee of a business of selling coupons to the public in Honolulu?

A. Yes, I have.

Q. Have you yourself been so engaged?

(Testimony of Alfred Stacy.)

A. Yes, I have.

Q. When and where was that?

A. In Kailua in 1954; in Honolulu in '52 and '56.

Q. Were any of these activities that you owned and operated yourself?

A. I was a partner in a corporation that owned one.

Q. And where did that operate, sir?

A. In Kailua and one in Honolulu.

Q. About how many business firms—how long have you been in Honolulu, sir?

A. Sixteen and a half years. [130]

Q. How many business firms, if you know, have been engaged in the operation of a business similar to the one that is in issue here in this case?

A. Five from my personal knowledge.

Q. And you have been associated with how many of them? A. Four.

Q. And you were in Court this morning?

A. I beg your pardon?

Q. You were sitting in the Courtroom this morning? A. Yes, I was.

Q. Are you generally familiar with the method of operation that was employed by the Defendants in this case in selling and promoting their Customers Checkbook? A. Yes, I am.

Q. And did these other business activities with respect to which you have prior hereto been associated follow the same general line?

A. The same general line.

(Testimony of Alfred Stacy.)

Q. And have any of these other business activities of yours been arrested for this type of conduct in and about Honolulu? A. No.

Mr. Greenstein: Your witness.

Mr. Langa: I have no questions, your Honor.

The Court: You are excused, Mr. Stacy.

ALMA THOMAS

called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

The Court: Will you try to keep your voice up so the Court and jury can hear you?

Direct Examination

Q. (By Mr. Greenstein): Will you please state your name and address?

A. Mrs. Alma Thomas, secretary. I live at 1918 Democrat Street.

Q. Now, by whom were you employed in May or June of this year?

A. By Mr. de Bruin and Mr. Lemon, Honolulu Customers Checkbook.

Q. And where was their office located?

A. 204 Merchandise Mart Building.

Q. In downtown Honolulu? A. Yes.

Q. Now, what was your particular job?

A. I was in charge of the girls.

Q. Well, would you amplify that; just what did you do with respect to other girl employees?

A. I instructed the new employees as to how they should do their duty. I assigned them a place

(Testimony of Alma Thomas.)

on the telephones to work at and I gave them each a salestalk and told [132] them that they were supposed to read it over the phone to the people and that they weren't supposed to add anything to that salestalk.

Q. Now, I show you what has been marked as Plaintiff's exhibit number 5—it might be 5-A and 5-B, and ask if these were the salestalks with respect to which you have just testified?

A. Yes, they were.

Q. I direct your attention to the telephone number which appears in the upper right hand corner of these exhibits, and ask you if you would explain to the Court and jury the significance of that telephone number?

A. It says here, "For call backs give this telephone number, 68079." These were for people who had questions about this checkbook, about where they could go to redeem their coupons and any other questions that they might want to ask. And that telephone was located in the very next room where Mr. Lemon and Mr. de Bruin could answer these calls and help the people.

Q. And I take it that this particular phone was situated not in the same room as the telephone room the girls were using? A. No.

Q. Now, did you yourself ever answer or sit by that telephone, being number 68079? [133]

A. Yes, I have.

Q. Now, prior to the publicity which appeared

(Testimony of Alma Thomas.)

in connection with this case tell the Court and jury whether you received many complaints?

A. Well, before the publicity started there weren't very many, and most of them were just limited to people who had had a checkbook before and were kind of skeptical of it. And then they talked to Mr. Lemon and Mr. de Bruin or myself about it, and we explained it over the phone, or else they would come into the office and look at it.

Q. Now, to the best of your knowledge, Mrs. Thomas, were any of the young ladies who used the telephone on behalf of Honolulu Customers Checkbook authorized to indicate to the person on the other end of the phone that this was a contest?

A. No, they weren't supposed to say anything that wasn't on the salestalk, and that salestalk doesn't contain the word "Contest" in it.

Mr. Greenstein: Your witness.

Cross Examination

Q. (By Mr. Langa): Was the script that the girls used always exactly as in the exhibit which you just identified?

A. To my knowledge it was.

Q. No changes of any sort at any time? [134]

A. I don't think so, because I started a week after the checkbook started. So to my knowledge they had those salestalks. That is the one I used when I started.

Q. Now, from your answer would I be right in inferring that prior to the time you started you

(Testimony of Alma Thomas.)

don't know, but subsequent to that time there was never any changing? A. That is right.

Q. You say you started a week after the telephone room started? A. I think so.

Q. You think so?

A. Well, because my cousin said she started on the first day and I started on Monday of the following week.

Q. Do you recall what week that was?

A. I am sorry, I don't.

Q. Was it in May or June?

A. I am pretty sure it was in June.

Q. In June. And was the—I notice that the exhibit refers to a number of free items of merchandise and services. Was that list exactly the same all the time you were there?

A. Let's see. I think it was.

Q. Always the same? A. Yes.

Q. Would you like to look at exhibits 5-A and 5-B to refresh your recollection? [135]

A. This one here was the one I used when I first started, because I made a few calls when I first started. And this other one here, it is different.

Q. Do you recall whose service station card you were selling at the time you first started?

A. I think it was George's Shell.

Q. George's Shell? A. Yes.

Q. Was that before or after it was George's Shell with the coupon books?

A. I beg your pardon?

Q. Was it George's Shell Service alone at the

(Testimony of Alma Thomas.)

time you started or was the coupon book with it when you started?

A. The coupon book was with it.

Q. Did any one ever ask you how to get his money back? A. Yes, they did.

Q. How did you handle those requests?

A. Well, I directed them to Mr. Lemon or Mr. de Bruin, because I am not authorized to give any refunds.

Q. And how did they handle those requests?

A. Most of the time they gave refunds.

Q. Did you see them give refunds?

A. Yes, I have.

Q. By check? [136] A. Yes.

Q. In the amount of \$4.90?

A. I really couldn't tell you how much the check was for, but I think it was.

Q. Well, now, if you think so, why is it that you are not willing to say so?

A. Because I have seen them give the checks, but I never took it away from the person and said, "Let me see it."

Q. You mean you never saw the check?

A. I seen them give it to a person, yes.

Q. But you never read the check?

A. I never read it.

Mr. Langa: No further questions.

Mr. Greenstein: No redirect, your Honor.

The Court: You are excused, Miss Thomas.

Mr. Greenstein: May I suggest that this would be a convenient time to recess for lunch.

The Court: Do you have any idea, Mr. Greenstein, as to how much longer your case will take?

Mr. Greenstein: I am sure we will conclude this afternoon.

The Court: Have you prepared any special instructions?

Mr. Greenstein: I will try to get them ready this afternoon, sir. [137]

The Court: Well, what I am trying to get at is whether there is any possibility of the case going to the jury this afternoon? I don't want to submit it to them at 4:30 or 5:00 o'clock.

Mr. Greenstein: I would rather think—depending on this afternoon—I would rather think it might be tomorrow morning.

The Court: Ladies and gentlemen of the jury, again before excusing you, you are instructed not to discuss this case with anyone or allow no one to discuss it with you, avoid reading or hearing anything about it and form no opinion about it. You are excused until 2:00 o'clock this afternoon. Court will recess until 2:00 this afternoon.

(An adjournment was here taken until 2:00 p.m. of this day.) [138]

Honolulu, T. H.

December 2, 1958, 2:00 P.M.

The Court: The record will show the jury is present, the Defendants and their counsel. Call your next witness, please.

Mr. Greenstein: Yes, sir.

BETTY MITCHELL

called as a witness on behalf of the Defendants, having been previously duly sworn, testified as follows:

The Court: You were sworn yesterday, were you not?

The Witness: Yes.

The Court: The oath you took yesterday is still binding upon you.

Direct Examination

Q. (By Mr. Greenstein): Would you please state your name for the record again?

A. Betty Mitchell.

Q. And you are the same person who testified yesterday? A. Yes.

Q. Now, Mrs. Mitchell, what is the name of your place of business, please?

A. Surf and Shore Store.

Q. And what is the address?

A. 2401 Kalakaua. [139]

Q. Have you had any business dealings with the Honolulu Customers Checkbook?

A. Yes.

Q. Did you agree that a coupon covering your establishment should be placed in this book?

A. Yes.

Q. Now, in connection with the representative of the Honolulu Customers Checkbook negotiating with you for an agreement relative to the use of the coupons, did they indicate to you what means they

(Testimony of Betty Mitchell.)

would employ in getting these coupons distributed to the public? A. A telephone crew.

Q. They said they would employ a telephone crew? A. Yes.

Mr. Greenstein: May I have this marked?

The Clerk: Defendant's M for identification.

(The document referred to was received as Defendant's exhibit M for identification.)

The Court: What is that again?

The Clerk: M for identification.

Q. (By Mr. Greenstein): I take it you signed an agreement with Honolulu Customers Checkbook?

A. Yes.

Q. I will show you a coupon which is marked Defendant's M for identification and ask you if that is the coupon that [140] refers to your place of business? A. Yes, that is it.

Q. And I take it you are happy with the arrangement permitting the use of these coupons to the Honolulu public? A. Yes.

Mr. Greenstein: Your Honor, during the noon recess I dictated instructions, and in connection with doing that I left all my files on my desk, which is going to be returned to me in 15 minutes, in which is included the agreement which I will refer to, which I want to offer in evidence when the papers are returned to me. For the purpose right now I would like to offer into evidence this particular coupon.

The Court: There being no objection it will be received as exhibit M.

(Testimony of Betty Mitchell.)

(The document referred to was received as Defendant's exhibit M in evidence.)

Mr. Greenstein: And subject to offering into evidence the agreement referred to, I will tender the witness to the prosecution.

Mr. Langa: If the Court please, might I suggest that perhaps Mrs. Mitchell may have her copy with her.

The Witness: No, I don't find it. I have lost it.

Cross Examination

Q. (By Mr. Langa): Mrs. Mitchell, what specifically would you be prepared to do in redeeming one of these coupons?

A. We would give a customer a dollar off if they purchased \$10. It is the same as a percent discount.

Q. I see. And I believe this coupon has an expiration date, does it, December 1, 1958. As of that date how many of these coupons had you redeemed? A. I never saw any.

Q. You never saw any? A. No.

Mr. Langa: No further questions.

The Court: Is there any question in your mind, Mr. Langa about the agreement entered into with the witness?

Mr. Langa: No. I have no question. I am sure she entered one, probably, just like all the others, calling for a coupon of this sort.

The Court: There is no reason for keeping Mrs. Mitchell here?

Mr. Langa: No, I don't see any.

The Court: Very well. You are excused.

The Witness: Thank you.

SAM PRICE

called as a witness on behalf of the Defendants,
being first duly sworn, testified as follows: [142]

Direct Examination

Q. (By Mr. Greenstein): Would you please state your name, address and occupation?

A. My name is Sam Price. I live at 337-A Keapau Street, Kailua. I am executive director of the Hawaiian Cerebral Palsy Association.

Q. How long have you been associated with cerebral palsy?

A. I have been associated with cerebral palsy in the island for around a year and a half or two years.

Q. Now, prior to that time, Mr. Price, what were your other businesses or occupations?

A. I was on the mainland and I was a public relations consultant with Eagle Lion studios, and as a free lance public relations man.

Q. And how long were you employed in that capacity?

A. I wasn't employed. I was self-employed. I was freelancing there and I was in that business for about ten years.

Q. Now, are you familiar with a coupon business on the mainland during your previous experience?

(Testimony of Sam Price.)

A. The first time that I became familiar with the coupon business, which I believe is similar to what has taken place here in the islands, I believe was the year—I am not certain about these years, but it was close to, probably, [143] 1945, '44, back about that time, a man by the name of Harry Schooler, he was the manager of the Casino Gardens, and the Casino Gardens was going to fail in business, because they didn't have enough business, and they were looking for a way to improve their business. So they hit on some different ideas for everybody to come in, they would let somebody come in free and what have you, and in the conversation they finally hit on, "Why don't we do it for the whole pier, and we will put out a coupon book of some kind, and by letting one person go free, the other person paid, and we could stimulate business."

And I was a public relations consultant and they came to me with this plan that they had, and after we got through tossing it around, we decided to extend it not only to the amusement center at Ocean Park but to include all of the businesses in the Los Angeles area who had something to give away and who seemed to be needing a stimuli for business. And we went around and got such people as dance studios and gas stations and all these different kinds of business that separately were advertising, that as a stimuli they would like to give something away. And this was based on a book that they put out. Most people like to get something for noth-

(Testimony of Sam Price.)

ing, and if you offer them something for nothing, why, that acts as a stimulant to them to come in and maybe buy something else. And it is an accepted way of promoting business. And so we [144] went around and got these contracts from these different people, and we were very successful in our first presentation of it.

Now, we did send these coupon books in the mail. We went to the post office anticipating that in all these something for nothing deals, you never really get something for nothing. What it amounts to is a sales stimulant. You are going to get a certain number of customers that are not happy with it. And usually these are not business men who entered into the contracts, because they go to their attorneys and they examine the thing and they realize that it is the usual form of stimulus that they have been using, but now it is all being packaged in one package. So they have no objection to it. They are usually very happy with it, as long as they are in the coupon book. But some customers sometimes object to it. And so we went to the post office. They told us, not as an official ruling, but they told us that in their opinion if we delivered the books and that if our contracts were legal, they couldn't see anything there that was wrong. They didn't tell us it wasn't wrong, but they couldn't at the outset of it see anything that was wrong.

We went on the radio and we advertised it and we went on the telephone and everything. And Mr. Schooler took in about a quarter of a million dol-

(Testimony of Sam Price.)

lars, about \$100,000 net profit the first time they did this.

I was going to tell you one thing that was very [145] interesting about it is when he repeated it the following year, he needed quite an investment, but he lost money. The public didn't seem to go for this type of thing twice in a row. Apparently a lot of people thought that they were going to get the whole thing for nothing. When they went down they found out that most of these people were using it for a sales stimulus. And there is never something for nothing, whether it is a stamp book or whatever it is in the advertising field. In any business you can't just give things away. There is a hidden way to pay for the cost involved. And so a lot of people when they found out there were these things, they wouldn't go for it the second time. But, nevertheless, we went into it as an honest intention. I mean there was no intent to take anything away from anybody. It was just that we thought we hit upon a method of selling which was superior to having the individual business do it. That was our intention in the promotion.

Q. Mr. Price, how long were you engaged in working with people using the coupon method of sales promotion?

A. Well, my only association at that time was directly with Mr. Schooler. I was a public relations consultant. I had nothing to do with the sales or anything. I merely helped him work out ways of contacting businesses and what have you. Later

(Testimony of Sam Price.)

when I was in Alaska I had some people up there and they were going into the same business. They came to me because [146] I knew something about how to contact businesses and set up the contracts involved between the company which put out the book and the business, and asked me something about it and I advised them for a fee as to how to go about that. And their's was something similar, again. They contacted all the bars in the town and they sold the coupon books on the base, and if you bought a coupon you would go into the bar and get a free drink, and that would act as a stimulus for you to buy some more drinks and that was the way that was presented. Each one of these things are presented a little differently.

The biggest project that was ever gone into along this line I was not connected with. But I understand and I have read, since Mr. Schooler went into it, some time around 1951, that somebody out in Alabama went into the thing on a national basis and it was a multi-million dollar project. They had national advertising on television on radio and everything. I don't know the details of their project, but I understand the same formula was used and I think that there were a lot of complaints and there were a lot of people again who were dissatisfied when they found out they didn't get something for nothing. Now, I think that is where your complaint usually comes. A lot of people are quite naive.

The Court: Mr. Price, it is very interesting, but

(Testimony of Sam Price.)

if you would just confine your answer to the question [147] we will get along faster.

The Witness: I thought I was trying to bring out the answer.

Q. (By Mr. Greenstein): Mr. Price, to the best of your knowledge is the coupon method of sales promotion still going on in the mainland?

A. To the best of my knowledge every once in a while somebody will go into a city and work it, yes. I think the statistics would show, you would find that throughout the United States at least 20 or 30 times a year in different large cities some variation of selling of the coupons is used. I would say it was used about like stamps are used in stores as a method of getting people to buy merchandise, and I believe you will find the pros and cons for it. Some people are for it and some against it. And I think if you go into a city that had just been worked you would find a lot of objections. They don't like it.

Mr. Greenstein: Your witness.

Cross Examination

Q. (By Mr. Langa): Now, I gather, Mr. Price, from your rather enlightening discussion of how coupon plans work that essentially what you need for a coupon plan is for some merchant to agree to honor coupons and some suckers who will agree to buy them, is that it? [148]

A. Well, I wouldn't say that—I wouldn't use the word "suckers." I would say this: that advertising

(Testimony of Sam Price.)

agencies—I mean we have different ways of looking at things—advertising agencies are continually making studies of ways to act as an incentive for people to buy during slow buying areas. And in order for a coupon book or things to go over, you have to find a group of merchants in a certain area that are suffering from a lack of business, and at this particular time they are open to any plan that will bring anybody into the store in order that they can show their merchandise, and they are willing to give something away in order to stimulate these people to buy something else. Now, the Thrifty Drug Stores in 1945——

Q. Yes. You are getting——

A. I was going to say where they came from.

Q. That is all right.

A. I don't think the word "suckers"—unless you are speaking of the general public as such.

Q. What I want to find out, I think you have partially answered, first you have to have the merchants, don't you? A. You do, yes.

Q. They have to agree to honor the coupons?

A. Yes, they do.

Q. Now, what kind of merchants usually in your experience—you had some, I gather, some extended experience, [149] plus reading and other——

A. Yes.

Q. ——material. So that you are fairly familiar with the system? A. Right.

Q. The idea. Are you also familiar with—have

(Testimony of Sam Price.)

you done any reading in publications of the Better Business Bureau on the very same subject?

A. I know something of their attitude towards them.

Q. Would you agree with them that service station operators are favorite objects of the operators of these things, as far as getting merchandise is concerned?

A. We always had trouble with service station operators for this reason: that when a man goes into the coupon deal he has to be able to measure very carefully whether the services he is going to give is going to take up so much of his time it is going to cost him money. If a service station operator is not careful, he is liable to give away more than he can afford to give away, and therefore he is one of the ones who might object to the contract. And he usually won't go into a second one.

Q. Would you say, then, that that is probably why the defendants had to change service station operators so many times in this particular coupon plan?

A. It might be. Might be, yes. [150]

Q. You just said you know the Better Business Bureau's attitude on these things.

A. Well, I would say this: that I think if a person were to go to the Better Business Bureau in advance, they would be told not to do it, because my experience with the Better Business Bureau has been that anything to disturb the status quo of business that is new that might bring a complaint, regardless of whether it is legitimate or not, they

(Testimony of Sam Price.)

are against it because it puts pressure on the Better Business Bureau.

Q. What do you mean by "legitimate"?

A. Well, whenever you go into a coupon deal with business men, there are those that hold with coupons and those that don't. So where you are stimulating business——

Q. No. Stop. I asked you what do you mean by "legitimate"? Be responsive.

A. Well, I don't understand what you mean. I mean by "legitimate" something that is ethical and right and which is legal and accepted, that there is nothing, no law against it.

Q. That there is no law against it?

A. I would say there is no law against the thing, then you would consider it legitimate, like stamps. There is a lot of pros and cons as to whether they should be used or not. But I think it has proven it is a legitimate thing, so [151] therefore you can't stop somebody who wants to from doing the thing. It is an enterprise.

Q. You mean it has been proven that there is no law?

A. Against stamps? Well, I don't know whether it has been proven, but there seems to be a lot of entrepreneurs that use the stamps. I don't know, personally, the law, sir.

Q. Now, the reason for the complaint, you say, is that people discovered too late that you don't really get something for nothing; is that a fair——

A. You don't get it all for nothing. You get

(Testimony of Sam Price.)

what usually is advertised, but they are impulsive. This is a question of impulsive buying. They think, they are under the impression that they are going to go somewhere and not have to pay anything. It is a lot like the little tickets you see left around the theaters that says "Free" on it.

Mr. Langa: No further questions.

Mr. Greenstein: No redirect examination.

The Court: You are excused Mr. Price.

Mr. Greenstein: Subject and reserving our right to produce into evidence the agreement referred to in connection with the prior witness, the Defendants rest.

The Court: Any rebuttal, Mr. Langa?

Mr. Langa: May we have a moment, please? We have no rebuttal evidence, your Honor.

The Court: How many of you ladies and gentlemen [152] have sat on trial juries before? Half of you. How many are from outside islands? I believe there are two. Yes.

The evidence is all in with the exception of the agreement between the Defendants and Surf and Shore. We always have a problem of settling the instructions of law. Sometimes counsel say that will take 15 or 20 minutes and it drags into two hours. Other times it is done inside of half an hour. And then argument will take some time. So under the circumstances I am not going to try to submit this case to you this afternoon. You might get it about 5:00 o'clock, and that isn't a very good time to start your deliberations. So we will start a

little earlier tomorrow morning. Then the case will get in your hands by before noon.

It is now more important than ever before that you not discuss this case with anyone or allow anyone to discuss it with you. You are instructed not to read or hear anything about it and form no opinions about it. You are excused until 9:30 tomorrow morning.

(Here the jury leaves the Courtroom.)

The Court: I would suggest to counsel that when you get your instructions that you go over them yourselves and see where you are in agreement, and then we will go in my Chambers and settle those where there is not agreement. I think, Mr. Greenstein, that agreement, which will be exhibit N, should be offered and received in the presence [153] of the jury.

Mr. Greenstein: Yes, your Honor.

The Court: So we will do that at 9:30 tomorrow morning. I am reluctant to submit this case to a comparatively new jury at about 4:30 in the afternoon. I think it is fair to them to start fresh tomorrow morning. So I will meet with you gentlemen whenever you are ready in my Chambers.

(Recess.)

(The following proceedings took place in Chambers outside the presence of the jury.)

The Court: Let the record show that we have gone through the instructions submitted by the Plaintiff and the Defendants. Plaintiff's numbers 1, 2, 3, 4, will be given with the approval of the Defendants, and the Plaintiff's number 5 will be

given as modified with the approval of the Defendants, the modification consisting of deleting the second sentence.

Defendants' instruction number 1 will be given, number 2 has been withdrawn, numbers 3, 4, 5, 6, will all be given, either verbatim or in substance, there being no objections to the instructions. Thank you, gentlemen.

(An adjournment was here taken for the day.) [154]

Honolulu, T. H.

December 3, 1958, 9:30 A.M.

(Case called.)

The Court: Are you ready, gentlemen?

Mr. Langa: Yes, your Honor.

Mr. Greenstein: Ready, your Honor.

The Court: The record will show the jury is present, the Defendants and their counsel.

I think there is one matter to be introduced.

Mr. Greenstein: Yes. May we at this time, subject to our reservation yesterday, offer in evidence the agreement between Surf and Shore and Customers Checkbook?

Mr. Langa: No objection.

The Court: It will be received as exhibit N.

(The document referred to was received as Defendants' exhibit N in evidence.)

The Court: Are you ready to make your opening argument, Mr. Langa?

Mr. Langa: I am.

(Argument by Mr. Langa.)

(Argument by Mr. Greenstein.)

(Argument by Mr. Langa.) [155]

* * * * *

[Endorsed]: Filed May 6, 1959.

[Endorsed]: No. 16468. United States Court of Appeals for the Ninth Circuit. Jack A. Lemon and Martin de Bruin, Appellants, vs. United States of America, Appellee. Transcript of the Record. Appeal from the United States District Court for the District of Hawaii.

Filed: May 11, 1959.

Docketed: May 15, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For The Ninth Circuit

No. 16468

JACK A. LEMON and MARTIN de BRUIN,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

Appellants hereby state that they intend to rely upon the following points on appeal:

I.

The trial court erred in denying the motion for a judgment of acquittal made by appellants at the close of the Government's case and renewed following verdict.

II.

The trial court erred in failing to rule and find the evidence adduced insufficient to support a verdict of guilty.

Dated: Honolulu, Hawaii, this 1st day of May, 1959.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellants.

Acknowledgment of Service Attached.

[Endorsed]: Filed May 11, 1959. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF THE RECORD TO BE
PRINTED ON APPEAL

Appellants hereby designate for inclusion in the printed record on appeal the following:

1. Indictment.
2. Transcript of proceedings, page 1 to page 155, line 22.
3. Verdict.
4. Motion in arrest of judgment.
5. Motion for acquittal.
6. Motion for new trial.
7. Clerk's minutes as to ruling on motions in arrest of judgment, for acquittal and new trial.
8. Judgment and sentence.
9. Notice of Appeal.
10. Bonds on Appeal.

* * * * *

12. Designation of the contents of the record on appeal.

13. Statement of points on which Appellants intend to rely.

14. This designation.

Dated: Honolulu, Hawaii, this 1st day of May, 1959.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellants.

Acknowledgment of Service Attached.

[Endorsed]: Filed May 11, 1959. Paul P. O'Brien, Clerk.